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Public Lands: Interior

43

PARTS 1000 TO 3999
Revised as of October 1, 1990

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Public Lands: Interior

43

PARTS 1000 TO 3999

Revised as of October 1, 1990

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Table of Contents

Page

Explanation v

Title 43:

Subtitle B—Regulations Relating to Public Lands—(Continued):

Chapter II—Bureau of Land Management, Department of the Interior 5

Finding Aids:

Index 847

Table of CFR Titles and Chapters 865

Alphabetical List of Agencies Appearing in the CFR 881

Redesignation Tables 890

List of CFR Sections Affected 897

Cite this Code: **CFR**

To cite the regulations in this volume use title, subpart and section number. Thus, 43 CFR 1601.0-1 *refers to title 43, subpart 1601, section 0-1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

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MARTHA L. GIRARD,
Director,
Office of the Federal Registe

October 1, 1990.

THIS TITLE

Title 43—PUBLIC LANDS: INTERIOR is composed of three volumes. Volume one (Parts 1-999) contains all current regulations issued under Subtitle A—Office of the Secretary of the Interior and Chapter I—Bureau of Reclamation, Department of the Interior. Volumes two and three (Parts 1000-3999 and Part 4000 to End) include all regulations issued under Chapter II—Bureau of Land Management, Department of the Interior. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

The first volume contains a distribution table. In Chapter II—Bureau of Land Management, Department of the Interior, the OMB control numbers appear in a "Note" immediately below the "Group" headings throughout the chapter. The first volume of Chapter II (Parts 1000-3999), contains redesignation tables. In the second volume of Chapter II (Part 4000 to End), a table of Public Land Orders follows the chapter. A subject index appears in the Finding Aids section of each volume of Title 43.

For this volume, Jacquelyn J. Demsky was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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Title 43—Public Lands: Interior

(This book contains Parts 1000 to 3999)

Part

SUBTITLE B—REGULATIONS RELATING TO PUBLIC LANDS (Continued):

CHAPTER II—Bureau of Land Management, Department of the Interior 1600

Subtitle B—Regulations Relating to Public Lands (Continued)

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

Part		Page
1000-1599	[Reserved]	
1600	Planning, programming, budgeting	9

GROUP 1700—PROGRAM MANAGEMENT

1720	Programs and objectives	22
1780	Cooperative relations	24

GROUP 1800—PUBLIC ADMINISTRATIVE PROCEDURES

1810	Introduction and general guidance	30
1820	Application procedures	33
1840	Appeals procedures	44
1850	Hearings procedures	45
1860	Conveyances, disclaimers and correction documents	45
1870	Adjudication principles and procedures	52
1880	Financial assistance, local governments	52

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

GROUP 2000—LAND RESOURCE MANAGEMENT: GENERAL

2070	Designation of areas and sites	61
2090	Special laws and rules	63

GROUP 2100—ACQUISITIONS

2110	Gifts	80
2120	Leases	82
2130	Acquisition of lands or interests in lands by purchase or condemnation	84

GROUP 2200—EXCHANGES

2200	Exchanges: General procedures	84

Part Pa
2210 State exchanges 9
2240 National Park System exchanges 9
2250 Wildlife Refuge exchanges 9
2270 Miscellaneous exchanges 9

GROUP 2300—WITHDRAWALS

2300 Land withdrawals 9
2360 National Petroleum Reserve in Alaska 11
2370 Restorations and revocations 11

GROUP 2400—LAND CLASSIFICATION

2400 Land classification 119
2410 Criteria for all land classifications 122
2420 Multiple-use management classifications 123
2430 Disposal classifications 124
2440 Segregation by classification 126
2450 Petition-application classification system 127
2460 Bureau initiated classification system 129
2470 Postclassification actions 132

GROUP 2500—DISPOSITION; OCCUPANCY AND USE

2510 Homesteads 132
2520 Desert land entries 148
2530 Indian allotments 164
2540 Color-of-title and omitted lands 168
2560 Alaska occupancy and use 179

GROUP 2600—DISPOSITION; GRANTS

2610 Carey Act grants 198
2620 State grants 204
2630 Railroad grants 215
2640 FAA airport grants 217
2650 Alaska native selections 219

GROUP 2700—DISPOSITION; SALES

2710 Sales: Federal Land Policy and Management Act 248
2720 Conveyance of Federally-owned mineral interests 255
2740 Recreation and Public Purposes Act 260
2760 Townsites 265
2780 Special areas 267

GROUP 2800—USE; RIGHTS-OF-WAY

2800 Rights-of-way, principles and procedures 275
2810 Tramroads and logging roads 298

Part Page
2880 Rights-of-way under the Mineral Leasing Act 314

GROUP 2900—USE: LEASES AND PERMITS

2910 Leases 329
2920 Leases, permits and easements 336

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

GROUP 3000—MINERALS MANAGEMENT

3000 Minerals management. General 348

GROUP 3100—OIL AND GAS LEASING

3100 Oil and gas leasing 350
3110 Noncompetitive leases 383
3120 Competitive leases 388
3130 Oil and gas leasing: National Petroleum Reserve, Alaska 393
3140 Combined hydrocarbon leasing 401
3150 Onshore oil and gas geophysical exploration........... 413
3160 Onshore oil and gas operations........................ 417
3180 Onshore oil and gas unit agreements: Unproven areas 442
3190 Delegation of authority, cooperative agreements and contracts for oil and gas inspection 463

GROUP 3200—GEOTHERMAL RESOURCES LEASING

3200 Geothermal resources leasing: General 468
3210 Noncompetitive leases 492
3220 Competitive leases 494
3240 Rules governing leases 496
3250 Utilization of geothermal resources........................ 503
3260 Geothermal resources operations........................ 508
3280 Geothermal resources unit agreements: Unproven areas 526

GROUP 3400—COAL MANAGEMENT

3400 Coal management: General 543
3410 Exploration licenses 549
3420 Competitive leasing 553
3430 Noncompetitive leases 571
3440 Licenses to mine 587
3450 Management of existing leases 588
3460 Environment........................ 593
3470 Coal management provisions and limitations 602

Part		Pa
3480	Coal exploration and mining operations rules	61

GROUP 3500—MANAGEMENT OF SOLID MINERALS OTHER THAN COAL

3500	Leasing of solid minerals other than coal and oil shale	64
3510	Phosphate	65
3520	Sodium	66
3530	Potassium	67
3540	Sulphur	68
3550	"Gilsonite" (including all vein-type solid hydrocarbons)	69
3560	Hardrock minerals	70
3570	Asphalt in Oklahoma	71
3580	Special leasing areas	72
3590	Solid minerals (other than coal) exploration and mining operations	730

GROUP 3600—MINERAL MATERIALS DISPOSAL

3600	Mineral materials disposal: General	740
3610	Sales	745
3620	Free use	749

GROUP 3700—MULTIPLE USE; MINING

3710	Public Law 167; Act of July 23, 1955	751
3720	Public Law 357; entry and location of source material upon public lands valuable for coal	758
3730	Public Law 359; mining in powersite withdrawals; general	758
3740	Public Law 585; multiple mineral development	762

GROUP 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

3800	Mining claims under the general mining laws	770
3810	Lands and minerals subject to location	790
3820	Areas subject to special mining laws	797
3830	Location of mining claims	812
3840	Nature and classes of mining claims	821
3850	Assessment work	826
3860	Mineral patent applications	829
3870	Adverse claims, protests and conflicts	840

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

PARTS 1000–1599—[RESERVED]

PART 1600—PLANNING, PROGRAMMING, BUDGETING

Subpart 1601—Planning

Sec.
1601.0-1 Purpose.
1601.0-2 Objective.
1601.0-3 Authority.
1601.0-4 Responsibilities.
1601.0-5 Definitions.
1601.0-6 Environmental impact statement policy.
1601.0-7 Scope.
1601.0-8 Principles.

Subpart 1610—Resource Management Planning

1610.1 Resource management planning guidance.
1610.2 Public participation.
1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.
1610.3-1 Coordination of planning efforts.
1610.3-2 Consistency requirements.
1610.4 Resource management planning process.
1610.4-1 Identification of issues.
1610.4-2 Development of planning criteria.
1610.4-3 Inventory data and information collection.
1610.4-4 Analysis of the management situation.
1610.4-5 Formulation of alternatives.
1610.4-6 Estimation of effects of alternatives.
1610.4-7 Selection of preferred alternative.
1610.4-8 Selection of resource management plan.
1610.4-9 Monitoring and evaluation.
1610.5 Resource management plan approval, use and modification.
1610.5-1 Resource management plan approval and administrative review.
1610.5-2 Protest procedures.
1610.5-3 Conformity and implementation.
1610.5-4 Maintenance.
1610.5-5 Amendment.
1610.5-6 Revision.
1610.5-7 Situations where action can be taken based on another agency's plan, or a land use analysis.
1610.6 Management decision review by Congress.
1610.7 Designation of areas.
1610.7-1 Designation of areas unsuitable for surface mining.
1610.7-2 Designation of areas of critical environmental concern.
1610.8 Transition period.

AUTHORITY: 43 U.S.C. 1711-1712.

SOURCE: 48 FR 20368, May 5, 1983, unless otherwise noted.

Subpart 1601—Planning

§ 1601.0–1 Purpose.

The purpose of this subpart is to establish in regulations a process for the development, approval, maintenance, amendment and revision of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management.

§ 1601.0–2 Objective.

The objective of resource management planning by the Bureau of Land Management is to maximize resource values for the public through a rational, consistently applied set of regulations and procedures which promote the concept of multiple use management and ensure participation by the public, state and local governments, Indian tribes and appropriate Federal agencies. Resource management plans are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses.

§ 1601.0–3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712); the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901); section 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

§ 1601.0–4 Responsibilities.

(a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director.

(b) State Directors shall provide quality control and supervisory review, including plan approval, for plans and related environmental impact statements and shall provide additional guidance, as necessary, for use by District and Area managers. State Directors shall file draft and final environmental impact statements associated with resource management plans and amendments.

(c) Resource management plans, amendments, revisions and related environmental impact statements shall be prepared by District or Area Managers, and approved by State Directors. In general, Area Managers will be responsible for directly supervising the preparation of the plan, and the District Manager for providing general direction and guidance to the planning effort.

§ 1601.0-5 Definitions.

As used in this part, the term:

(a) *Areas of Critical Environmental Concern* or *ACEC* means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.

(b) *Conformity or conformance* means that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.

(c) *Consistent* means that the Bureau of Land Management plans will adhere to the terms, conditions, and decisions of officially approved and adopted resource related plans, or in their absence, with policies and programs, subject to the qualifications in § 1615.2 of this title.

(d) *Guidance* means any type of written communication or instruction that transmits objectives, goals, con-
straints, or any other direction t
helps the District and Area Manag
and staff know how to prepare a s
cific resource management plan.

(e) *Local government* means any
litical subdivision of the State and a
general purpose unit of local gove
ment with resource planning, resou
management, zoning, or land use re
lation authority.

(f) *Multiple use* means the mana
ment of the public lands and their va
ious resource values so that they a
utilized in the combination that w
best meet the present and futu
needs of the American people; makin
the most judicious use of the lands f
some or all of these resources or rela
ed services over areas large enough t
provide sufficient latitude for period
adjustments in use to conform t
changing needs and conditions; th
use of some lands for less than all o
the resources; a combination of ba
anced and diverse resource uses tha
takes into account the long term need
of future generations for renewabl
and non-renewable resources, includ
ing, but not limited to, recreation
range, timber, minerals, watershed
wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(g) *Officially approved and adopted resource related plans* means plans, policies, programs and processes prepared and approved pursuant to and in accordance with authorization provided by Federal, State or local constitutions, legislation, or charters which have the force and effect of State law.

(h) *Public* means affected or interested individuals, including consumer organizations, public land resource users, corporations and other business entities, environmental organizations and other special interest groups and officials of State, local, and Indian tribal governments.

(i) *Public lands* means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(j) *Resource area* means a geographic portion of a Bureau of Land Management district. It is the administrative subdivision whose manager has primary responsibility for day-to-day resource management activities and resource use allocations and is, in most instances, the area for which resource management plans are prepared and maintained.

(k) *Resource management plan* means a land use plan as described by the Federal Land Policy and Management Act. The resource management plan generally establishes in a written document:

(1) Land areas for limited, restricted or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;

(2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained;

(3) Resource condition goals and objectives to be attained;

(4) Program constraints and general management practices needed to achieve the above items;

(5) Need for an area to be covered by more detailed and specific plans;

(6) Support action, including such measures as resource protection, access development, realty action, cadastral survey, etc., as necessary to achieve the above;

(7) General implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action; and

(8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision.

It is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations.

§ 1601.0-6 Environmental impact statement policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process and, wherever possible, the proposed plan and related environmental impact statement shall be published in a single document.

§ 1601.0-7 Scope.

(a) These regulations apply to all public lands.

(b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate.

§ 1601.0-8 Principles.

The development, approval, maintenance, amendment and revision of resource management plans will provide for public involvement and shall be consistent with the principles described in section 202 of the Federal Land Policy and Management Act of 1976. Additionally, the impact on local economies and uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned mineral interests shall be considered.

Subpart 1610—Resource Management Planning

§ 1610.1 Resource management planning guidance.

(a) Guidance for preparation and amendment of resource management plans may be provided by the Director and State Director, as needed, to help the District and Area Manager and staff prepare a specific plan. Such guidance may include the following:

(1) National level policy which has been established through legislation, regulations, executive orders or other Presidential, Secretarial or Director approved documents. This policy may

include appropriately developed resource management commitments, suct as a right-of-way corridor crossing several resource areas, which are not required to be reexamined as part of the planning process.

(2) Analysis requirements, planning procedures and other written information and instructions required to be considered in the planning process.

(3) Guidance developed at the State Director level, with necessary and appropriate governmental coordination as prescribed by § 1610.3 of this title. Such guidance shall be reconsidered by the State Director at any time during the planning process that the State Director level guidance is found, through public involvement or other means, to be inappropriate when applied to a specific area being planned.

(b) A resource management plan shall be prepared and maintained on a resource area basis, unless the State Director authorizes a more appropriate area.

(c) An interdisciplinary approach shall be used in the preparation, amendment and revision of resource management plans as provided in 40 CFR 1502.6. The disciplines of the preparers shall be appropriate to the values involved and the issues identified during the issue identification and environmental impact statement scoping stage of the planning process. The District or Area Manager may use any necessary combination of Bureau of Land Management staff, consultants, contractors, other governmental personnel, and advisors to achieve an interdisciplinary approach.

§ 1610.2 Public participation.

(a) The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(b) The Director shall, early in each fiscal year, publish a planning schedule advising the public of the status of each plan in process of preparation or to be started during that fiscal year the major action on each plan during that fiscal year and projected new planning starts for the 3 succeeding fiscal years. The notice shall call for public comments on projected new planning starts so that such comments can be considered in refining priorities for those years.

(c) Upon starting the preparation, amendment or revision of resource management plans, public participation shall be initiated by a notice published in the FEDERAL REGISTER and appropriate media, including newspapers of general circulation in the State, adjoining States where the District Manager deems it appropriate, and the District. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7). This notice shall include the following:

(1) Description of the proposed planning action;

(2) Identification of the geographic area for which the plan is to be prepared;

(3) The general types of issues anticipated;

(4) The disciplines to be represented and used to prepare the plan;

(5) The kind and extent of public participation opportunities to be provided;

(6) The times, dates and locations scheduled or anticipated for any public meetings, hearings, conferences or other gatherings, as known at the time;

(7) The name, title, address and telephone number of the Bureau of Land Management official who may be contacted for further information; and

(8) The location and availability of documents relevant to the planning process.

(d) A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained by the District Manager and those on the list shall be notified of public participation activities. Individuals or groups may ask to be placed on this list. Public participation activities conducted by the Bureau of Land Management shall be documented by a record or summary of the principal issues discussed and comments made.

The documentation together with a list of attendees shall be available to the public and open for 30 days to any participant who wishes to clarify the views he/she expressed.

(e) At least 15 days' public notice shall be given for public participation activities where the public is invited to attend. Any notice requesting written comments shall provide for at least 30 calendar days for response. Ninety days shall be provided for review of the draft plan and draft environmental impact statement. The 90-day period shall begin when the Environmental Protection Agency publishes a notice of the filing of the draft environmental impact statement in the FEDERAL REGISTER.

(f) Public notice and opportunity for participation in resource mangement plan preparation shall be appropriate to the areas and people involved and shall be provided at the following specific points in the planning process:

(1) General notice at the outset of the process inviting participation in the identification of issues (See §§ 1610.2(c) and 1610.4-1);

(2) Review of the proposed planning criteria (See § 1610.4-2);

(3) Publication of the draft resource management plan and draft environmental impact statement (See § 1610.4-7);

(4) Publication of the proposed resource management plan and final environmental impact statement which triggers the opportunity for protest (See §§ 1610.4-8 and 1610.5-1(b)); and

(5) Public notice and comment on any significant change made to the plan as a result of action on a protest (See § 1610.5-1(b)).

(g) Copies of an approved resource management plan and amendments shall be reasonably available for public review. This includes copies at the State Office for the District, the District Manager's Office, the Area Office for lands directly involved and additional locations determined by the District Manager. Plans, amendments and revisions shall be published and single copies shall be available to the public upon request during the public participation process. After approval, a fee may be charged for additional copies at a rate established by the Director.

(h) Supporting documents to a resource management plan shall be available for public review at the office where the plan was prepared.

(i) Fees for reproducing requested documents beyond those used as part of the public participation activities and other than single copies of the printed plan amendment or revision may be charged according to the Department of the Interior schedule for Freedom of Information Act requests in 43 CFR part 2.

(j) When resource management plans involve areas of potential mining for coal by means other than underground mining, and the surface is privately owned, the Bureau of Land Management shall consult with all surface owners who meet the criteria in § 3400.0-5 of this title. Contact shall be made in accordance with subpart 3427 of this title and shall provide time to fully consider surface owner views. This contact may be made by mail or in person by the District or Area Manager or his/her appropriate representative. A period of at least 30 days from the time of contact shall be provided for surface owners to convey their preference to the Area or District Manager.

(k) If the plan involves potential for coal leasing, a public hearing shall be provided prior to the approval of the plan, if requested by any person having an interest which is, or may be, adversely affected by implementation of such plan. The hearing shall be conducted as prescribed in § 3420.1-5 of this title and may be combined with a regularly scheduled public meeting. The authorized officer conducting the hearing shall:

(1) Publish a notice of the hearing in a newspaper of general circulation in the affected geographical area at least once a week for 2 consecutive weeks;

(2) Provide an opportunity for testimony by anyone who so desires; and

(3) Prepare a record of the proceedings of the hearing.

§ 1610.3 Coordination with other Federal agencies, State and local governments, and Indian tribes.

§ 1610.3-1 Coordination of planning efforts.

(a) In addition to the public involvement prescribed by § 1610.2 of this title the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of the coordination are for the State Directors and District and Area Managers to keep apprised of non-Bureau of Land Management plans; assure that consideration is given to those plans that are germane in the development of resource management plans for public lands; assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans; and provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes in the development of resource management plans, including early pubic notice of proposed decisions which may have a significant impact on non-Federal lands.

(b) State Directors and District and Area Managers shall provide other Federal agencies, State and local governments, and Indian tribes opportunity for review, advice, and suggestion on issues and topics which may affect or influence other agency or other government programs. To facilitate coordination with State governments, State Directors should seek the policy advice of the Governor(s) on the timing, scope and coordination of plan components; definition of planning areas; scheduling of public involvement activities; and the multiple use opportunities and constraints on public lands. State Directors may seek written agreements with Governors or their designated representatives on processes and procedural topics such as exchanging information, providing advice and participation, and timeframes for receiving State government participation and review in a timely fashion. If an agreement is not reached, the State Director shall provide opportunity for Governor and State agency review, advice and su gestions on issues and topics that th State Director has reason to believ could affect or influence State govern ment programs.

(c) In developing guidance to Di trict Managers, in compliance wit section 1611 of this title, the State D rector shall:

(1) Ensure that it is as consistent a possible with existing officially adopt ed and approved resource relate plans, policies or programs of othe Federal agencies, State agencies Indian tribes and local government that may be affected, as prescribed by § 1610.3-2 of this title;

(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistencies exist and cannot be remedied; and

(3) Notify the other Federal agencies, State agencies, Indian tribes or local governments with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which the State Director believes may lead to resolution of such inconsistencies.

(d) A notice of intent to prepare, amend, or revise a resource management plan shall be submitted, consistent with State procedures for coordination of Federal activities, for circulation among State agencies. This notice shall also be submitted to Federal agencies, the heads of county boards, other local government units and Tribal Chairmen or Alaska Native Leaders that have requested such notices or that the responsible line manager has reason to believe would be concerned with the plan or amendment. These notices shall be issued simultaneously with the public notices required under § 1610.2(b) of this title.

(e) Federal agencies, State and local governments and Indian tribes shall have the time period prescribed under § 1610.2 of this title for review and comment on resource management plan proposals. Should they notify the District or Area Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan and their officially approved and adopted resources related plans, the resource management plan documentation shall show how those inconsistencies were addressed and, if possible, resolved.

(f) When an Advisory Council has been formed under section 309 of the Federal Land Policy and Management Act for the district in which the resource area is located, that council shall be informed and their views sought and considered throughout the resource management planning process.

§ 1610.3–2 Consistency requirements.

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

(b) In the absence of officially approved or adopted resource-related plans of other Federal agencies, State and local governments and Indian tribes, guidance and resource management plans shall, to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes. Such consistency will be accomplished so long as the guidance and resource management plans are consistent with the policies, programs and provisions of Federal laws and regulations applicable to public lands, including, but not limited to, Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans.

(c) State Directors and District and Area Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans, and programs differ, those of the higher authority will normally be followed.

(e) Prior to the approval of a proposed resource management plan, or amendment to a management framework plan or resource management plan, the State Director shall submit to the Governor of the State(s) involved, the proposed plan or amendment and shall identify any known inconsistencies with State or local plans, policies or programs. The Governor(s) shall have 60 days in which to identify inconsistencies and provide recommendations in writing to the State Director. If the Governor(s) does not respond within the 60-day period, the plan or amendment shall be presumed to be consistent. If the written recommendation(s) of the Governor(s) recommend changes in the proposed plan or amendment which were not raised during the public participation process on that plan or amendment, the State Director shall provide the public with an opportunity to comment on the recommendation(s). If the State Director does not accept the recommendations of the Governor(s), The State Director shall notify the Governor(s) and the Governor(s) shall have 30 days in which to submit a written appeal to the Director of the Bureau of Land Management. The Director shall accept the recommendations of the Governor(s) if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Director shall communicate to the Governor(s) in writing and publish in the Federal Register the reasons for his/her determination to accept or reject such Governor's recommendations.

§ 1610.4 Resource management planning process.

§ 1610.4-1 Identification of issues.

At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs, and resource use, development and protection opportunities for consideration in the preparation of the resource management plan. The District and Area Manager shall analyze those suggestions, plus available district records of resource conditions, trends, needs and problems, and select topics and determine the issues to be addressed during the planning process. Issues may be modified during the planning process to incorporate new information. The identification of issues shall also comply with the scoping process required by regulations implementing the National Environmental Policy Act (40 CFR 1501.7).

§ 1610.4-2 Development of planning criteria.

The District or Area Manager shall prepare criteria to guide development of the resource management plan or revision, to ensure that it is tailored to the issues previously identified and to ensure that unnecessary data collection and analyses are avoided. Planning criteria shall generally be based upon applicable law, Director and State Director guidance, the results of public participation and coordination with other Federal agencies, State and local governments and Indian tribes. Proposed planning criteria, including any significant changes, shall be made available for public comment prior to being approved by the District manager for use in the planning process. Planning criteria may be changed as planning proceeds, based on public suggestions and the findings of the various studies and assessments.

§ 1610.4-3 Inventory data and information collection.

(a) The District or Area Manager shall arrange for resource, environmental, social, economic and institutional data and information to be collected, or assembled if already available. New information and inventory data collection will emphasize significant issues and decisions with the greatest potential impact. Inventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements.

§ 1610.4-4 Analysis of the management situation.

The District or Area Manager shall analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. The analysis of the management situation shall provide, consistent with multiple use principles, the basis for formulating reasonable alternatives, including the types of resources for development or protection. Factors to be considered may include, but are not limited to:

(a) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;

(b) Opportunities to meet goals and objectives defined in national and State Director guidance;

(c) Resource demand forecasts and analyses relevant to the resource area;

(d) The estimated sustained levels of the various goods, services and uses that may be attained under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director guidance;

(e) Specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes;

(f) Opportunities to resolve public issues and management concerns;

(g) Degree of local dependence on resources from public lands;

(h) The extent of coal lands which may be further considered under provisions of § 3420.2-3(a) of this title; and

(i) Critical threshold levels which should be considered in the formulation of planned alternatives.

§ 1610.4-5 Formulation of alternatives.

All reasonable resource management alternatives shall be considered and several complete alternatives developed for detailed study. The alternatives developed shall reflect the variety of issues and guidance applicable to the resource uses. In order to limit the total number of alternatives analyzed in detail to a manageable number for presentation and analysis, all reasonable variations shall be treated as subalternatives. One alternative shall be for no action, which means continuation of present level or systems of resource use. The plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

§ 1610.4-6 Estimation of effects of alternatives.

The District or Area Manager shall estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the planning criteria and procedures implementing the National Environmental Policy Act. The estimate may be stated in terms of probable ranges where effects cannot be precisely determined.

§ 1610.4-7 Selection of preferred alternative.

The District or Area Manager shall evaluate the alternatives and the estimation of their effects according to the planning criteria, and develop a preferred alternative which shall best meet Director and State Director guidance. The preferred alternative shall be incorporated into the draft resource management plan and draft environmental impact statement. The resulting draft resource management plan and draft environmental impact statement shall be forwarded to the State Director for approval, publication, and filing with the Environmental Protection Agency. This draft plan and environmental impact statement shall be provided for comment to the Governor of the State involved, and to officials of other Federal agencies, State and local governments and Indian tribes that the State Director has reason to believe would be concerned. This action shall constitute compliance with the requirements of § 3420.1-7 of this title.

§ 1610.4-8 Selection of resource management plan.

After publication of the draft resource management plan and draft environmental impact statement, the District Manager shall evaluate the comments received and select and recommend to the State Director, for supervisory review and publication, a proposed resource management plan and final environmental impact statement. After supervisory review of the proposed resource management plan, the State Director shall publish the plan and file the related environmental impact statement.

§ 1610.4-9 Monitoring and evaluation.

The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The District Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan.

§ 1610.5 Resource management plan approval, use and modification.

§ 1610.5-1 Resource management plan approval and administrative review.

(a) The proposed resource management plan or revision shall be submitted by the District Manager to the State Director for supervisory review and approval. When the review is completed the State Director shall either publish the proposed plan and file the related environmental impact statement or return the plan to the District Manager with a written statement of the problems to be resolved before the proposed plan can be published.

(b) No earlier than 30 days after the Environmental Protection Agency publishes a notice of the filing of the final environmental impact statement in the FEDERAL REGISTER, and pending final action on any protest that may be filed, the State Director shall approve the plan. Approval shall be withheld on any portion of a plan or amendment being protested until final action has been completed on such protest. Before such approval is given, there shall be public notice and opportunity for public comment on any significant change made to the proposed plan. The approval shall be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act of 1969 (40 CFR 1505.2).

§ 1610.5–2 Protest procedures.

(a) Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the FEDERAL REGISTER. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or part of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believed to be wrong.

(3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision of the Department of the Interior.

§ 1610.5–3 Conformity and implementation.

(a) All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning, shall conform to the approved plan.

(b) After a plan is approved or amended, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement or other instrument of occupancy and use, the District and Area Manager shall take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contracts, cooperative agreements or other instruments for occupancy and use, conform to the approved plan or amendment within a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment may appeal such action pursuant to 43 CFR 4.400 at the time the action is proposed for implementation.

(c) If a proposed action is not in conformance, and warrants further consideration before a plan revision is scheduled, such consideration shall be through a plan amendment in accordance with the provisions of § 1610.5-5 of this title.

(d) More detailed and site specific plans for coal, oil shale and tar sand resources shall be prepared in accordance with specific regulations for those resources: Group 3400 of this title for coal; Group 3900 of this title for oil shale; and part 3140 of this title for tar sand. These activity plans shall be in conformance with land use plans prepared and approved under the provisions of this part.

§ 1610.5-4 Maintenance.

Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance is limited to further refining or documenting a previously approved decision incorporated in the plan. Maintenance shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this title or the preparation of an environmental assessment or environmental impact statement. Maintenance shall be documented in plans and supporting records.

§ 1610.5-5 Amendment.

A resource management plan may be changed through amendment. An amendment shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan. An amendment shall be made through an environmental assessment of the proposed change, or an environmental impact statement, if necessary, public involvement as prescribed in § 1610.2 of this title, interagency coordination and consistency determination as prescribed in § 1610.3 of this title and any other data or analysis that may be appropriate. In all cases, the effect of the amendment on the plan shall be evaluated. If the amendment is being considered in response to a specific proposal, the analysis required for the proposal and for the amendment may occur simultaneously.

(a) If the environmental assessment does not disclose significant impact, a finding of no significant impact may be made by the District Manager. The District Manager shall then make a recommendation on the amendment to the State Director for approval, and upon approval, the District Manager shall issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

(b) If a decision is made to prepare an environmental impact statement, the amending process shall follow the same procedure required for the preparation and approval of the plan, but consideration shall be limited to that portion of the plan being considered for amendment. If several plans are being amended simultaneously, a single environmental impact statement may be prepared to cover all amendments.

§ 1610.5-6 Revision.

A resource management plan shall be revised as necessary, based on monitoring and evaluation findings (§ 1610.4-9), new data, new or revised policy and changes in circumstances affecting the entire plan or major portions of the plan. Revisions shall comply with all of the requirements of these regulations for preparing and approving an original resource management plan.

§ 1610.5-7 Situations where action can be taken based on another agency's plan, or a land use analysis.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area. There are situations of mixed ownership where the public land estate is under non-Federal surface, or administration of the land is shared by the Bureau of Land Management with another Federal agency. The District and Area Manager may use the plans or the land use analysis of other agencies when split or shared estate conditions exist in any of the following situations:

(a) Another agency's plan (Federal, State, or local) may be used as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public participation.

(b) After evaluation and review, the Bureau of Land Management may adopt another agency's plan for continued use as a resource management plan if an agreement is reached between the Bureau of Land Management and the other agency to provide for maintenance and amendment of the plan, as necessary, to comply with law and policy applicable to public lands.

(c) A land use analysis may be used to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act, consists of an environmental assessment or impact statement, public participation as required by § 1610.2 of this title, the consultation and consistency determinations required by § 1610.3 of this title, the protest procedure prescribed by § 1610.5-2 of this title and a decision on the coal lease proposal. A land use analysis meets the planning requirements of section 202 of the Federal Land Policy and Management Act. The decision to approve the land use analysis and to lease coal is made by the Departmental official who has been delegated the authority to issue coal leases.

§ 1610.6 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congres before it can be implemented. Thi report shall not be required prior t approval of a resource managemen plan which, if fully or partially implemented, would result in such an elimination. The required report shall b submitted as the first action step i implementing that portion of a resource management plan which woul require elimination of such a use.

§ 1610.7 Designation of areas.

§ 1610.7-1 Designation of areas unsuitabl for surface mining.

(a)(1) The planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for all or certain types of surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. The unsuitability criteria to be applied during the planning process are found in § 3461.1 of this title.

(2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the Bureau of Land Management for comment, the resource management plan, or plan amendment if available, shall be the basis for review.

(3) After a resource management plan or plan amendment is approved in which lands are assessed as unsuitable, the District Manager shall take all necessary steps to implement the results of the unsuitability review as it applies to all or certain types of coal mining.

(b)(1) The resource management planning process is the chief process by which public lands are reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.

(2) When petitions to designate lands unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the Bureau of Land Management, the resource management plan, if available, shall be the basis for determinations for designation.

(3) After a resource management plan or plan amendment in which lands are designated unsuitable is approved, the District Manager shall take all necessary steps to implement the results of the unsuitability review as it applies to minerals or materials other than coal.

§ 1610.7-2 Designation of areas of critical environmental concern.

Areas having potential for Areas of Critical Environmental Concern (ACEC) designation and protection management shall be identified and considered throughout the resource management planning process (see §§ 1610.4-1 through 1610.4-9).

(a) The inventory data shall be analyzed to determine whether there are areas containing resources, values, systems or processes or hazards eligible for further consideration for designation as an ACEC. In order to be a potential ACEC, both of the following criteria shall be met:

(1) *Relevance.* There shall be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.

(2) *Importance.* The above described value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

(b) The State Director, upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs, shall publish a notice in the FEDERAL REGISTER listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated. The notice shall provide a 60-day period for public comment on the proposed ACEC designation. The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of any ACEC involved. The approved plan shall include the general management practices and uses, including mitigating measures, identified to protect designated ACEC.

§ 1610.8 Transition period.

(a) Until superseded by resource management plans, management framework plans may be the basis for considering proposed actions as follows:

(1) The management framework plan shall be in compliance with the principle of multiple use and sustained yield and shall have been developed with public participation and governmental coordination, but not necessarily precisely as prescribed in §§ 1610.2 and 1610.3 of this title.

(2) No sooner than 30 days after the Environmental Protection Agency publishes a notice of the filing of a final court-ordered environmental impact statement—which is based on a management framework plan—proposed actions may be initiated without any further analysis or processes included in this subpart.

(3) For proposed actions other than those described in paragraph (a)(2) of this section, determination shall be made by the District or Area Manager whether the proposed action is in conformance with the management framework plan. Such determination shall be in writing and shall explain the reasons for the determination.

(i) If the proposed action is in conformance, it may be further considered for decision under procedures applicable to that type of action, including requirements of regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR parts 1500-1508.

(ii) If the proposed action is not in conformance with the management framework plan, and if the proposed action warrants further favorable consideration before a resource management plan is scheduled for preparation, such consideration shall be through a management framework plan amendment using the provisions of § 1610.5-5 of this title.

(b)(1) If an action is proposed where public lands are not covered by a management framework plan or a resource management plan, an environmental assessment and an environmental impact statement, if necessary, plus any other data and analysis necessary to make an informed decision, shall be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.

(2) A land disposal action may be considered before a resource management plan is scheduled for preparation, through a planning analysis, using the process described in § 1610.5-5 of this title for amending a plan.

Group 1700—Program Management

PART 1720—PROGRAMS AND OBJECTIVES

Subpart 1725—Program Policy

Sec.
1725.0-1 Purpose.
1725.1 Current administration.
1725.2 Disposal policy.
1725.2-1 Pricing policy.
1725.3 Management policy.
1725.3-1 Priority of use for lands retained for multiple use management.
1725.3-2 Intensity of use and management of lands retained for multiple use management.
1725.3-3 Components of multiple use management.

Authority: R.S. 2478, 43 U.S.C. 1201.

Source: 35 FR 9512, June 13, 1970, unless otherwise noted.

Subpart 1725—Program Policy

§ 1725.0-1 Purpose.

This subpart lists general and basic policies which will be followed in the implementation of the various public land disposal and management authorities administered by the Secretary of the Interior through the Bureau of Land Management.

§ 1725.1 Current administration.

Pending classification authorized by the Classification and Multiple Use Act (78 Stat. 986, 43 U.S.C. 1411-18) or other available authority, all lands administered by the Secretary through the Bureau of Land Management will continue to be administered for multiple use and sustained yield of the several products and services obtainable therefrom.

§ 1725.2 Disposal policy.

Public lands will be transferred ou of Federal ownership in the most eff cient manner possible. This will be a complished, where practicable, by th following procedures.

(a) Encouragement and assistanc will be extended to State, county, an local governments in master plannin and zoning. They will be encourage to utilize the best modern technique for quality land utilization, includin preservation of natural beauty an open space values, and the preventio of uneconomic use and development o flood plains.

(b) Inclusion in patents of suitable conditions or restrictions on the use of the land, in those situations where a tract of land is suitable for disposal but has been evaluated as having a flood hazard potential which may cause economic loss to improvements or may endanger human life. If inclusion of needed conditions or restrictions in the deed are not permitted by law, the tract may be withheld from disposal to avoid, such losses.

(E.O. 11296, 31 FR 10663, Aug. 11, 1966)

(c) Participation of the public and consultation with local government will be invited in the formulation of plans for transfers of public lands.

(d) Timely and orderly identification and disposition of lands needed for urban or suburban purposes, or chiefly valuable for residential, commercial, industrial, agricultural, or public purposes will be made.

(e) Practices and procedures will be utilized which will achieve appropriate dispositions with minimum administrative costs.

(f) Priorities will be established based upon availability of funds, urgency of needs for public lands, and resulting economies or effectiveness of Government operations.

[35 FR 9512, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

§ 1725.2-1 Pricing policy.

The public land laws generally require as consideration for transfer of public lands out of Federal ownership, a fair return in the form of one or more of the following: Money, lands, or other property; development of the lands; or some public benefit, tangible or intangible. Where the law requires the Secretary to determine the return, such determination will be made in accordance with the following principles:

(a) Wherever the law does not provide otherwise, disposals to private persons and profit organizations will be made at not less than fair market value for the interests conveyed and through competitive bidding.

(b) Transfers to States and local government agencies for commercial, or industrial purposes will be through negotiated sale at fair market values.

(c) Transfer of land to States and local government agencies and to nonprofit organizations to be developed for public purposes will be made at prices and other terms that will encourage and facilitate the accomplishment of the public purposes involved.

(d) Where development is required by law or regulation in lieu of less than full payment, there must be appropriate assurance that the development effort will be bona fide and substantial.

§ 1725.3 Management policy.

§ 1725.3-1 Priority of use for lands retained for multiple use management.

No overall priority is assigned by the Classification and Multiple Use Act or by the Secretary to any specific use. The Secretary or his delegate will authorize, under applicable authority, that use or combination of uses which will best achieve the objectives of multiple use, taking into consideration all pertinent factors, including, but not limited to, ecology, existing uses, and the relative values of the various resources in particular areas.

§ 1725.3-2 Intensity of use and management of lands retained for multiple use management.

Consistent with the provisions of applicable law, the land will be managed:

(a) To attain the widest range of beneficial uses of the environment (including the land, water, flora, fauna, and other environmental elements), without undue environmental degradation, risk to health or safety, or other undesirable consequences.

(b) To attain optimum production of its various products and for those other beneficial uses for which the lands are physically and economically suited, consistent with acceptable environmental quality.

(c) To preserve important historic, cultural, and natural aspects of our national heritage. The following matters will be considered:

(1) Existing or future economic and social needs for the resource, use, value, or commodity.

(2) The effect of any proposed use on all other resource values.

(3) Coordination and cooperation with the resource use and management programs of States, local governments, public organizations and private landowners.

(4) Consistency with national programs.

(5) Compatibility of the possible uses.

(6) Compatibility with the maintenance and enhancement of long-term productivity of the lands and the integrity of the environment.

[36 FR 6422, Apr. 3, 1971]

§ 1725.3-3 Components of multiple use management.

Section 1 of the Classification and Multiple Use Act lists ten objectives of public land management. The methods of management of the public lands will be governed by the provision of existing laws. The listed objectives as interpreted by the Secretary are as follows:

(a) *Domestic livestock grazing.* Management of public lands for domestic livestock grazing involves the protection, regulated use, and development of forage producing public lands and the management of livestock (cattle, sheep, horses, and goats) use to obtain a sustained yield of forage.

(b) *Fish and wildlife development and utilization.* Management of public lands for fish and wildlife development and utilization involves the protection, regulated use, and development of habitat on public lands and waters to obtain a sustained yield of fish and wildlife and provision and maintenance of public access to fish and wildlife resources.

(c) *Industrial development.* Management of public lands for industrial development involves the protection, regulated use, and development of public lands in a manner to facilitate the growth and stability of industry, whether off-site or on-site, long term or short term.

(d) *Mineral production.* Management of public lands for mineral production involves the protection, regulated use, and development of public lands in a manner to facilitate the extraction and processing of minerals, whether off-site or on-site, long term or short term.

(e) *Occupancy.* Management of public lands for occupancy involves the protection, regulated use, and development of lands as sites for economically and socially useful structures, either publicly or privately owned.

(f) *Outdoor recreation.* Management of public lands for outdoor recreation involves the protection, regulated use, and development of public lands having open-space values in a manner that will preserve those values and will make them available for appropriate recreation enjoyment by the public.

(g) *Timber production.* Management of public lands for timber production involves the protection, regulated use, and development of public forest and woodland areas to obtain a sustained yield of forest products.

(h) *Watershed protection.* Management of public lands for watershed protection involves the protection, regulated use, and development of any public lands in a manner to control runoff; to minimize soil erosion, siltation, and other destructive consequences of uncontrolled water flows; and to maintain and improve storage, yield, quality, and quantity of surface and subsurface waters.

(i) *Wilderness preservation.* Management of public lands for wilderness preservation involves the protection and regulated use of public lands which are in a roadless and primitive condition in a manner to preserve their essential wilderness character.

(j) *Preservation of public values.* Management of public land for preservation of public values that would be lost if the land passed from Federal ownership involves the protection, re
ulated use, and development of a
public lands having unique or scar
characteristics or site values in
manner to insure their continu
availability to the general publi
either national or local, temporarily
permanently. It also involves the pr
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damage, including avoidance of u
and development which may requi
future expenditures for flood prote
tion and flood damage relief.

PART 1780—COOPERATIVE RELATIONS

Subpart 1784—Advisory Committees

Sec.

1784.0-1 Purpose.
1784.0-2 Objectives.
1784.0-3 Authority.
1784.0-4 [Reserved]
1784.0-5 Definitions.
1784.0-6 Policy.
1784.1 Establishment, duration, termina tion, and renewal.
1784.1-1 Establishment.
1784.1-2 Duration, termination, and renew al.
1784.2 Composition, avoidance of conflic of interest.
1784.2-1 Composition.
1784.2-2 Avoidance of conflict of interest.
1784.3 Member service.
1784.4 Public participation.
1784.4-1 Calls for nominations.
1784.4-2 Notice of meetings.
1784.4-3 Open meetings.
1784.5 Operating procedures.
1784.5-1 Functions.
1784.5-2 Meetings.
1784.5-3 Records.
1784.6 Membership and functions of committees.
1784.6-1 National Public Lands Advisory Council.
1784.6-2—1784.6-3 [Reserved]
1784.6-4 District advisory councils.
1784.6-5 Grazing advisory boards.

AUTHORITY: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*

SOURCE: 45 FR 8177, Feb. 6, 1980, unless otherwise noted.

Subpart 1784—Advisory Committees

§ 1784.0-1 Purpose.

This subpart contains standards and procedures for the creation, operation and termination of advisory committees to advise the Secretary of the Interior and Bureau of Land Management on matters relating to public lands and resources under the administrative jurisdiction of the Bureau of Land Management.

§ 1784.0-2 Objectives.

The objective of advisory committees established under these regulations is to make available to the Department of the Interior and Bureau of Land Management the expert counsel of concerned, knowledgeable citizens and public officials regarding both the formulation of operating guidelines and the preparation and execution of plans and programs for the use and management of public lands, their natural and cultural resources, and the environment.

§ 1784.0-3 Authority.

(a) The Federal Advisory Committee Act (5 U.S.C. Appendix 1) requires establishment of a system governing advisory committees in the Executive Branch of the Federal Government and specifies policies, procedures, and responsibilities for committee creation, management and termination.

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), requires establishment of advisory councils representative of major citizen interests concerned with resource management planning or the management of public lands.

(c) Section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix, as amended; 64 Stat. 1262), authorizes the Secretary of the Interior to make provisions deemed appropriate authorizing the performance by any other officer, or by any agency or employee or the Department of the Interior of any Departmental function. The establishment of advisory committees is deemed an appropriate action.

[45 FR 8177, Feb. 6, 1980, as amended at 51 FR 39529, Oct. 29, 1986]

§ 1784.0-4 [Reserved]

§ 1784.0-5 Definitions.

As used in this subpart, the term:

(a) *Advisory committee* means any committee, council, or board established or utilized for purposes of obtaining advice or recommendations.

(b) *Secretary* means Secretary of the Interior.

(c) *Director* means the Director of the Bureau of Land Management.

(d) *Authorized representative* means the Federal officer or employee designated by an advisory committee charter who approves meeting agendas and attends all meetings of the committee and its subcommittees, if any.

(e) *Public lands* means any lands and interest in lands owned by the United States administered by the Secretary of the Interior through the Bureau of Land Management, except:

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

§ 1784.0-6 Policy.

As part of the Department's program for public participation, it is the policy of the Secretary to establish and employ committees representative of major citizens' interests, or where required by law, of special citizen interests, to advise the Secretary and Director regarding policy formulation, program planning, decisionmaking, attainment of program objectives, and achievement of improved program coordination and economies in the management of public lands and resources; to regularly ensure that such committees are being optimally employed; and to limit the number of advisory committees to that essential to the conduct of the public's business.

§ 1784.1 Establishment, duration, termination, and renewal.

§ 1784.1-1 Establishment.

(a) An advisory committee required by statute is established or renewed upon the filing of a charter, signed by the Secretary, with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) An advisory committee not specifically required by statute shall be established only when the Secretary has—

(1) Determined as a matter of formal record, after consultation with the General Services Administration, that establishment of the committee is in the public interest in connection with duties required of the Department of the Interior by law;

(2) Signed and filed the committee charter; and

(3) Published in the FEDERAL REGISTER a notice of his determination and of the establishment of the committee.

(c) An advisory committee shall not meet or take any action until the Committee's charter has been signed by the Secretary and copies filed with the appropriate committees of the Senate and House of Representatives and the Library of Congress.

§ 1784.1–2 Duration, termination, and renewal.

(a) An advisory committee not mandated by statute, i.e., established at the discretion of the Secretary, shall terminate not later than 2 years after its establishment unless, prior to that time, it is rechartered by the Secretary and copies of the new charter are filed with the appropriate committees of the Senate and House of Representatives. Any committee so renewed shall continue for not more than 2 additional years unless, prior to expiration of such period, it is again rechartered.

(b) Any advisory committee mandated by statute shall terminate not later than 2 years after the date of its establishment unless its duration is otherwise provided by law. Upon the expiration of each successive two-year period following date of establishment, a new charter shall be prepared and, after Secretarial approval, filed with the appropriate committees of the Senate and House of Representatives for any statutory advisory committee being continued.

§ 1784.2 Composition, avoidance of conflict of interest.

§ 1784.2–1 Composition.

(a) Each advisory committee shall be structured to provide fair membership balance, both geographic and interest-specific, in terms of the functions to be performed and points of view to be represented, as prescribed by its charter. Each shall be formed with the objective of providing representative counsel and advice about public land and resource planning, retention, management and disposal. No person is to be denied an opportunity to serve because of race, age, sex, religion or national origin.

(b) Only an individual who holds a lease or permit to graze livestock upon public lands under the jurisdiction of a Bureau of Land Management District Office shall be eligible to serve as a member of a grazing advisory board.

(c) Individuals shall qualify to serve on an advisory committee other than a grazing advisory board because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the charter.

§ 1784.2–2 Avoidance of conflict of interest.

(a) Persons or employees of organizations who hold leases, licenses, permits, contracts or claims which involve lands or resources administered by the Bureau of Land Management normally shall not serve on advisory committees except—

(1) Holders of grazing permits and leases may serve on grazing advisory boards;

(2) That the lack of candidates make them the only available candidates; or

(3) When they have special knowledge or experience which is needed to accomplish the committee functions to be performed.

(b) No advisory committee or board member, including a grazing advisory board member, shall participate in deliberations or vote on any matter in which the advisor has a direct interest.

§ 1784.3 Member service.

(a) Elections to grazing advisory boards shall be for 2-year terms unless a shorter period is specified in the charter. Individuals may be re-elected to additional 2-year terms without limit.

(b) Appointment to district advisory councils shall be for 3-year terms, on the established staggered-term basis, with as near as possible to one-third of each council subject to appointment each year. An appointment shall be considered effective, for the purpose of reappointment eligibility as defined in paragraphs (b) (3), (4), and (5) of this section, on January 1 of the first year of the term, regardless of the date the appointment is actually made. Terms and appointment are governed by the following:

(1) The term of the member of a council who has been appointed on the basis of his status as an elected official of general purpose government serving the people of the district for which the council is established shall end upon that person's departure from such elective office if such departure occurs before his or her term of appointment or reappointment to the council would otherwise expire. However, the Secretary, in his discretion, may permit the member to complete the term in another vacant position on the council, provided that the member is qualified to represent one of the other categories of major citizens' interests set forth in the charter of the council;

(2) A vacancy occurring by reason of removal, resignation, death, or departure from elective office shall be filled for the balance of the vacating member's term using the same method by which the original appointment was made;

(3) A person who has served a 3-year term on a council may, at the discretion of the Secretary, be reappointed to a second consecutive 3-year term;

(4) A person who has served an appointed term of less than 3 years on a council to fill a vacancy occurring for reasons described in paragraph (b)(2) of this section may, at the discretion of the Secretary, be reappointed to two consecutive 3-year terms;

(5) A person who has served 2 consecutive 3-year terms on a council may be subsequently appointed no earlier than 3 years after his or her last date of membership on that council. However, the Secretary may waive this 3-year waiting period and appoint that person to a 1-year term, upon determining that the member's continued or renewed service on the council is in the public interest and critical to the effective functioning of the council, and the responsible district manager has certified that these conditions have been met.

(c) Appointment to the National Public Lands Advisory Council shall be on a staggered-term basis. Initial appointments in 1982 shall be made in the following fashion: 7 members shall be appointed for terms expiring December 31, 1982; 7 members shall be appointed for terms expiring December 31, 1983; and 7 members shall be appointed for terms expiring December 31, 1984. Subsequent appointments shall be made for 3-year terms. At least one member shall be an elected official of general purpose government. Vacancies occurring by reason of removal, resignation or death shall be filled for the balance of the vacating member's term using the same methods by which the original appointment was made. At the discretion of the Secretary, members may be reappointed to additional terms. The Council shall elect its own officers.

(d) Elections or appointments to all other advisory bodies shall be for two-year terms unless a shorter period is specified in the charter, the election procedures, or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorizing appointing official.; and

(e) Committee members advise and report only to the official(s) specified in the charter. Service as an advisor, however, does not limit the rights of a member acting as a private citizen or as a member or official of another organization.

(f) The Secretary or his authorized representative may, after written notice, terminate the service of an advisor if, in the judgment of the Secretary or his authorized representative, such removal is in the public interest, or if the advisor—

(1) No longer meets the requirements under which elected or appointed;

(2) Fails or is unable to participate regularly in committee work; or

(3) Has violated Federal law or the regulations of the Secretary.

(g) For purposes of compensation, members of advisory committees, except for grazing advisory board members, shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703.

[45 FR 8177, Feb. 6, 1980, as amended at 47 FR 6429, Feb. 12, 1982; 47 FR 34389, Aug. 9, 1982; 51 FR 39529, Oct. 29, 1986; 52 FR 5284, Feb. 20, 1987]

§ 1784.4 Public participation.

§ 1784.4-1 Calls for nominations.

Except where otherwise provided, candidates for appointment to advisory committees are sought through public calls for public nominations. Such calls shall be published in the Federal Register and are made through media releases and systematic contacts with individuals and organizations interested in the use and management of public lands and resources.

§ 1784.4-2 Notice of meetings.

(a) Notices of meetings of advisory committees and any subcommittees that may be formed shall be published in the Federal Register and distributed to the media 30 days in advance of a meeting. However, if urgent matters arise, notices of meetings of advisory committees and any subcommittees shall be published in the Federal Register and distributed to the media at least 15 days in advance of a meeting.

(b) Notices shall set forth meeting locations, topics or issues to be discussed, and times and places for the public to be heard.

§ 1784.4-3 Open meetings.

(a) All advisory committee and subcommittee meetings and associated field examinations shall be open to the public and news media.

(b) Anyone may appear before or file a statement with a committee or subcommittee regarding matters on a meeting agenda.

(c) The scheduling of meetings and the preparation of agendas shall be done in a manner that will encourage and facilitate public attendance and participation. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all who seek to be heard regarding matters on the agenda.

§ 1784.5 Operating procedures.

§ 1784.5-1 Functions.

The function of an advisory committee is solely advisory, and recommendations shall be made only to the authorized representative specified in its charter. Determinations of actions to be taken on the reports and recommendations of a committee shall be made only by the Secretary or his authorized representative.

§ 1784.5-2 Meetings.

(a) Advisory committees shall meet only at the call of the Secretary or his authorized representative.

(b) No meeting shall be held in the absence of the Secretary or his authorized representative.

(c) Each meeting shall be conducted with close adherence to an agenda which has been approved in advance by the authorized representative.

(d) The authorized representative may adjourn an advisory committee meeting at any time when—

(1) Continuance would be inconsistent with either the purpose for which the meeting was called or the established rules for its conduct; or

(2) Adjournment is determined to be in the public interest.

§ 1784.5-3 Records.

(a) Detailed records shall be kept of each meeting of an advisory committee and any subcommittees that may be formed. These records shall include as a minimum—

(1) The time and place of the meeting;

(2) Copies of the Federal Register and other public notices announcing the meeting;

(3) A list of advisors and Department or Bureau employees present;

(4) A list of members of the public present and who each represented;

(5) The meeting agenda;

(6) A complete and accurate summary description of matters discussed and conclusions reached;

(7) A list of recommendations made by the advisory committee;

(8) Copies of all reports received, issued, or approved by the Committee or subcommittee; and

(9) A description of the nature of public participation. The Chairperson of the advisory committee shall certify to the accuracy of meeting records.

(b) All records, reports, transcripts, minutes, recommendations, studies, working papers, and other documents prepared by or submitted to an advisory committee shall be available for public inspection and copying in the Bureau of Land Management office responsible for support of that committee. Upon request, copies shall be provided at the cost of duplication as established by the regulations in 43 CFR part 2 (Appendix A).

§ 1784.6 Membership and functions of committees.

§ 1784.6–1 National Public Lands Advisory Council.

(a) From nominations by individuals, national organizations and associations concerned with problems related to planning for and management of lands under the jurisdiction of the Bureau of Land Management, the Director will submit to the Secretary a list of citizens recommended for membership on the National Public Lands Advisory Council. From this list or other sources, the Secretary shall appoint to the Council 21 persons who are qualified through education, training or experience to give informed and objective advice concerning land use and resource policy, planning, and management for the public lands.

(b) The National Public Lands Advisory Council shall advise the Secretary, through the Director, as to regulations, policies, plans and programs of national scope relative to public lands and resources under the jurisdiction of the Bureau of Land Management.

(c) The Council shall meet at the call of the Director. The Director or the Director's designee shall be the authorized representative at all meetings of the Council and committees that may be formed.

(d) Administrative support for the Council shall be the responsibility of the Director.

[45 FR 8177, Feb. 6, 1980, as amended at 47 FR 6429, Feb. 12, 1982]

§§ 1784.6–2—1784.6–3 [Reserved]

§ 1784.6–4 District advisory councils.

(a) An advisory council shall be established for each Bureau of Land Management District.

(b) The Secretary or his designee shall appoint 15 members to serve on the California Desert District Advisory Council, and not less than 10 nor more than 15 members to serve on each of the other councils in accordance with the provisions of § 1784.3(b) of this title. One of the appointees shall be an elected official of general purpose government serving within the District. Membership shall be balanced to reflect the various elements in the plans and programs for the District.

(c) A district advisory council advises the Bureau of Land Management District Manager to whom it reports regarding multiple use plans and programs for public lands and resources under the jurisdiction of that District.

(d) In addition to the functions assigned by paragraph (c) of this section, the California Desert District Advisory Council advises the California Desert District Manager with respect to the implementation of the comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area.

(e) A District advisory council and its subcommittee(s) shall meet at the call of the District Manager and elect their own officers. The District Manager or a designee shall be the authorized representative at all meetings of the.council and its subcommittees.

(f) Administrative support for a District advisory council and its subcommittees shall be provided by the office of the District Manager to whom it reports.

[45 FR 8177, Feb. 6, 1980, as amended at 51 FR 39530, Oct. 29, 1986]

§ 1784.6-5 Grazing advisory boards.

(a) At least one grazing advisory board shall be established in each District office of the 16 contiguous Western States—

(1) Having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing; and

(2) Upon petition of a simple majority of public land livestock lessees and permittees under the jurisdiction of the District Office.

(b) The District Manager to whom the board reports shall call biennially for nominations from grazing lessees and permitees under the jurisdiction of the District office. From such nominations, the lessees and permittees shall, in turn, elect no less than 5 nor more than 8 individuals to serve on the board. Member service shall be without cost to the Government.

(c) The advice and recommendations to the District Manager by a grazing advisory board shall be limited to matters regarding—

(1) The development of allotment management plans; and

(2) The utilization of range-betterment funds.

(d) A grazing advisory board shall meet at least once a year at the call of the District Manager to whom it reports, and shall elect its own chairperson. The District Manager or a designee shall be the authorized representative at all meetings.

(e) Administrative support for a grazing advisory board shall be provided by the office of the District Manager to whom the board reports.

[45 FR 8177, Feb. 6, 1980, as amended at 51 FR 39530, Oct. 29, 1986]

Group 1800—Public Administrative Procedures

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

Subpart 1810—General Rules

Sec.
1810.1 Rules of construction; words and phrases.
1810.2 Communications by mail; when mailing requirements are met.
1810.3 Effect of laches; authority to bind government.
1810.4 Information required by forms.

Subpart 1812—Qualifications of Practitioners

1812.1 General.
1812.1-1 Regulations governing practice before the Department.
1812.1-2 Inquiries.

Subpart 1813—Public Land Records

1813.1 Tract books and plats.
1813.1-1 Notations to records.
1813.1-2 Filing of township plats.
1813.2 Serial register.
1813.2-1 Inspection of serial register.
1813.3 Production of records in court.
1813.3-1 Statutory authority.

Subpart 1815—Disaster Relief

1815.0-3 Authority.
1815.0-5 Definitions.
1815.1 Timber sale contracts.
1815.1-1 Relief granted.
1815.1-2 Applications.

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 1810—General Rules

Source: 35 FR 9513, June 13, 1970, unless otherwise noted.

§ 1810.1 Rules of construction; words and phrases.

Except where the context of the regulation or of the Act of the Congress on which it is based, indicates otherwise, when used in the regulations of this chapter:

(a) Words importing the singular include and apply to the plural also;

(b) Words importing the plural include the singular;

(c) Words importing the masculine gender include the feminine as well;

(d) Words used in the present tense include the future as well as the present;

(e) The words *person* and *whoever* include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

(f) *Officer* and *authorized officer* include any person authorized by law or by lawful delegation of authority to perform the duties described;

(g) *Signature* or *subscription* includes a mark when the person making the same intended it as such;

(h) *Oath* includes *affirmation*, and *sworn* includes *affirmed*;

(i) *Writing* includes printing and typewriting as well as holographs, and *copies* include all types of reproductions on paper, including photographs, multigraphs, mimeographs and manifolds;

(j) The word *company* or *association*, when used in reference to a corporation, shall be deemed to embrace the words *successors and assigns of such company or association*, in like manner as if these last-named words, or words of similar import, were expressed.

§ 1810.2 Communications by mail; when mailing requirements are met.

(a) Where the regulations in this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

§ 1810.3 Effect of laches; authority to bind government.

(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

(b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

(c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

§ 1810.4 Information required by forms.

Whenever a regulation in this chapter requires a form approved or prescribed by the Director of the Bureau of Land Management, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

Subpart 1812—Qualifications of Practitioners

§ 1812.1 General.

§ 1812.1-1 Regulations governing practice before the Department.

Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of part 1 of this title.

[35 FR 9513, June 13, 1970]

§ 1812.1-2 Inquiries.

No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

[35 FR 9513, June 13, 1970]

Subpart 1813—Public Land Records

SOURCE: 35 FR 9513, June 1970, unless otherwise noted.

§ 1813.1 Tract books and plats.

§ 1813.1-1 Notations to records.

(a) The authorized officer shall cause the proper notation to be made on the plats in order that the status of a tract may be readily ascertained by the person examining the plat.

(b) All withdrawals, reservations, classifications, designations, segregations and orders affecting the disposition of lands shall be noted on the tract books and plats.

(c) Use authorizations in excess of 1 year and other leases, easements and permits shall be noted on the tract books and plats upon issuance. Title transfers shall be noted upon issuance of patent.

[47 FR 32130, July 26, 1982]

§ 1813.1-2 Filing of township plats.

(a) After acceptance of a survey, the original plat thereof will be returned to the State Director, the duplicate plat will be retained in the files of the Bureau of Land Management in Washington, D.C., and the triplicate plat will be forwarded to the proper office. The plat will be placed on record in the open files of the respective offices immediately upon receipt thereof and will then be available to the public as a matter of information only with respect to the technical data and descriptions appearing thereon; copies of such plat and the related field notes will be furnished upon request and payment of the costs as provided in § 2.4 of this title. When the authorized officer of the proper office is instructed to file the plat without the usual public notice, such plat will be regarded as officially filed in his office on the date of receipt.

(b) If public notice of the filing of the plat is to be given, the authorized officer shall prepare the notice for publication in the FEDERAL REGISTER.

§ 1813.2 Serial register.

§ 1813.2-1 Inspection of serial register.

The serial register is a public record and may be reasonably inspected by any person, provided such examination may be made without interfering with the orderly dispatch of public business. Should the authorized offi-
cer ascertain that any person is c
taining information therefrom for i
proper purposes, he will deny su
person further access thereto.

§ 1813.3 Production of records in court.

§ 1813.3-1 Statutory authority.

Whenever, pursuant to the Act
April 19, 1904 (33 Stat. 186; 43 U.S.
13), the authorized officer shall
served with a subpoena duces tecum
other valid legal process requiring hi
to produce, in any United States cou
or in any court of record of any Stat
the original application for entry
public lands or the final proof of res
dence and cultivation or any othe
original papers on file in the Burea
of Land Management on which
patent to land has been issued o
which furnish the basis for suc
patent, it shall be the duty of such au
thorized officer to at once notify th
Director of the Bureau of Land Ma
agement of the service of such proces
specifying the particular papers he
required to produce, and upon receip
of such notice from any authorized o
ficer the Director of the Bureau o
Land Management shall at once tran
mit to such authorized officer th
original papers specified in suc
notice, and attach to such papers
certificate, under seal of his offic
properly authenticating them as th
original papers upon which patent wa
issued. The said act also provides tha
such papers so authenticated shall b
received in evidence in all courts o
the United States and in the sever
State courts of the States of th
Union. (33 Stat. 186; 43 U.S.C. 13)

CROSS REFERENCE: For testimony of e
ployees and use of books, records and fil
in judicial and administrative proceeding
see part 2 of this title.

Subpart 1815—Disaster Relief

AUTHORITY: Sec. 242 (a), (b), Disast
Relief Act of 1970, 84 Stat. 1744.

SOURCE: 36 FR 15534, Aug. 17, 1971, unle
otherwise noted.

§ 1815.0-3 Authority.

Disaster Relief Act of 1970 (84 Sta
1744).

§ 1815.0-5 Definitions.

Major disaster means any hurricane, tornado, storm, flood, high water, winddriven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States, which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the Governor of any State in which such catastrophe occurs or threatens to occur certifies the need for Federal disaster assistance and gives assurance of the expenditure of a reasonable amount of the funds of such State, its local governments, or other agencies for alleviating the damage, loss, hardship or suffering resulting from such catastrophe.

§ 1815.1 Timber sale contracts.

§ 1815.1-1 Relief granted.

(a) Where an existing timber sale contract does not provide relief to the timber purchaser from major physical change, not due to negligence of the purchaser, prior to approval of construction of any section of specified road or other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection therewith, the United States will bear a share of the increased construction costs. The United States' share will be determined by the authorized officer as follows:

(1) For sales of less than 1 million board feet, costs over $1,000;

(2) For sales of from 1 to 3 million board feet, costs over the sum of $1 per thousand board feet;

(3) For sales of over 3 million board feet, costs over $3,000.

(b) Where the authorized officer determines that the damages caused by such major physical change are so great that restoration, reconstruction, or construction is not practical under this cost-sharing arrangement, he may cancel the timber sale contract notwithstanding any provisions thereof.

§ 1815.1-2 Applications.

(a) *Place of filing.* The application for relief shall be filed in the office which issued the contract.

(b) *Form of application.* No special form of application is necessary.

(c) *Contents of application.* (1) The date of issuance of the contract and any identification number.

(2) The particular disaster and its effect upon contract performance.

(3) An estimate of the damages suffered.

(4) A statement of the relief requested.

(5) An estimate of time which will be needed to overcome the delay in performance caused by the disaster.

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

Sec.
1821.1 Names of claimants.
1821.2 Office hours; place for filing; time limit.
1821.2-1 Office hours; place for filing.
1821.2-2 Time limit for filing documents.
1821.2-3 Simultaneous filings; determination of order of priority.
1821.2-4 Use of certified mail.
1821.3 Oaths.
1821.3-1 Elimination of the requirements.
1821.3-2 Officers qualified.
1821.4 Notations on applications.
1821.4-1 Notation of rights-of-way.
1821.4-2 When notation required.
1821.5 Entries for lands in more than one land district.
1821.5-1 Governing regulations.
1821.5-2 Applications and fees to be filed in each office.
1821.5-3 Mining claims.
1821.6 Alaska.
1821.6-1 Applications not to be rejected because executed more than 10 days prior to filing.
1821.6-2 Joint action to acquire public lands.

Subpart 1822—Payments and Repayments

1822.0-3 Authority for repayments.
1822.1 Payments.
1822.1-1 Amount.
1822.1-2 Forms of remittances.
1822.2 Repayments.
1822.2-1 Filing of applications.

Sec.
1822.2-2 Statement of grounds for repayment.
1822.3 Act of June 16, 1880.
1822.3-1 Statutory provisions.
1822.3-2 Applications.
1822.3-3 Recording of reconveyance.
1822.3-4 Repayment to heirs, executors, administrators.
1822.3-5 Repayment to assignees.
1822.3-6 Repayment to mortgagees.

Subpart 1823—Proofs and Testimony

1823.1 Time and place; appearances.
1823.1-1 Time; place; continuance.
1823.1-2 Who may appear.
1823.2 Procedures.
1823.2-1 Examination of claimant and witnesses.
1823.2-2 Testimony to be taken separate and apart from and not within the hearing of the others.
1823.2-3 Advice concerning laws and penalties for false swearing.
1823.2-4 Fees; costs.
1823.3 Transmittal of proof papers.
1823.4 Proof on entries in more than one district.
1823.5 Conduct of officers.
1823.5-1 Prohibited activities.

Subpart 1824—Publication and Posting of Notices

1824.0-1 Purpose.
1824.1 Selection of newspaper.
1824.1-1 Qualifications of newspaper.
1824.1-2 Discretionary authority of authorized officer; limitations.
1824.2 Payment for republication of notice.
1824.3 Frequency of publication.

Subpart 1825—Relinquishments

1825.1 When relinquished land becomes subject to further appropriation.
1825.2 Relinquishment of right-of-way.

Subpart 1826—Reinstatement of Canceled Entries

1826.1 Application for reinstatement.

Subpart 1821—Execution and Filing of Forms

AUTHORITY: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

SOURCE: 35 FR 9514, June 13, 1970, unless otherwise noted.

§ 1821.1 Names of claimants.

Full names of claimants must appear in applications, final certificates, and patents.

§ 1821.2 Office hours; place for filing; time limit.

§ 1821.2-1 Office hours; place for filing.

(a) The hours during which the offices set forth in paragraph (d) of this section shall be open to the public for the filing of applications and other documents and the inspection of records shall be prominently displayed in each office.

(b) Applications and other documents cannot be received for filing by the authorized officer out of office hours, nor elsewhere than at his office; nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

(c) Copies of forms may be obtained from any of the offices listed under paragraph (d) of this section. However, completed forms and other documents must be filed in the office having jurisdiction.

(d) The Bureau of Land Management has redelegated authority to District and Area Offices for processing certain types of public lands disposal and use authorization applications. In those instances where delegation has been made to the District or Area Office from the State Office, applications shall be filed with the District or Area Office having responsibility for the public lands covered by the requested action. Accordingly, applicants, prior to the filing of an application, should contact the State, District or Area Office of the Bureau of Land Management in their immediate vicinity or for the geographic area in which the public lands being applied for are located. The locations of the offices are as follows:

STATE OFFICE AND AREA OF JURISDICTION

Alaska State Office, 701 C Street, Box 13, Anchorage, AK 99513—Alaska

Arizona State Office, 3707 North 7th Street, Phoenix, AZ 85014; Mail: P.O. Box 16563, Phoenix, AZ 85011—Arizona

California State Office, Federal Building, 2800 Cottage Way, Sacramento, CA 95825—California

Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215—Colorado

Eastern States Office, 350 South Pickett Street, Alexandria, VA 22304—Arkansas, Iowa, Louisiana, Minnesota, Missouri and all States east of the Mississippi

Idaho State Office, 3380 Americana Terrace, Boise, ID 83706—Idaho

Montana State Office, Granite Tower, 222 North 32nd Street, P.O. Box 36800, Billings, MT 59107—Montana, North Dakota and South Dakota

Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520—Nevada

New Mexico State Office, Joseph M. Montoya, Federal Building, South Federal Place, P.O. Box 1449, Santa Fe, NM 87504-1449—Kansas, New Mexico, Oklahoma, and Texas

Oregon State Office, 825 Northeast Multnomah Street, P.O. Box 2965, Portland, OR 97208—Oregon and Washington

Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, UT 84111-2303—Utah

Wyoming State Office, 2515 Warren Avenue, Cheyenne, WY 82001; Mail: P.O. Box 1828, Cheyenne, WY 82003—Wyoming and Nebraska

District and Area Offices

A list of the name, address and jurisdiction of all District and Area Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240

(Sec. 310, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740))

[38 FR 12111, May 9, 1973, as amended at 47 FR 12292, Mar. 22, 1982; 47 FR 40413, Sept. 14, 1982; 48 FR 40724, Sept. 9, 1983; 48 FR 42984, Sept. 21, 1983; 50 FR 38122, Sept. 23, 1985; 51 FR 23547, June 30, 1986; 51 FR 26248, July 22, 1986; 51 FR 34981, Oct. 1, 1986]

§ 1821.2-2 Time limit for filing documents.

(a) The authorized officer will reject all applications to make entry which are executed more than 10 days prior to filing.

(b) Such rejections should be subject to the right of appeal and to the right to file a new and properly executed application, or to reexecute the rejected application, without priority.

(c) The authorized officer will accept as filed within the time named in paragraph (a) of this section all applications to enter which were deposited in the mails within 10 days from the date of execution.

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public.

(f) Except when paragraph (c) of this section is applicable, filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing.

(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

(1) The law does not permit him to do so.

(2) The rights of a third party or parties have intervened.

(3) The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

[38 FR 12111, May 9, 1973]

§ 1821.2-3 Simultaneous filings; determination of order of priority.

(a) Two or more documents are considered as simultaneously filed when:

(1) In accordance with the regulations in § 1821.2-2, they are delivered to and received by the proper office at the same time; or

(2) They are filed pursuant to an order which specifies that documents delivered to and received by the proper office during a specified period

shall be considered as simultaneously filed.

(b) Whenever it is necessary, for the purposes of the regulations in this chapter, to determine the order of priority of consideration among documents which have been simultaneously filed, such order of priority will be established by a drawing open to public view.

(c) Nothing in this regulation shall be construed as denying any preference right granted by applicable law or regulation or as validating any document which is invalid under applicable law or regulation.

[38 FR 12112, May 9, 1973]

§ 1821.2-4 Use of certified mail.

Certified mail as outlined in 39 CFR part 58, may be used in lieu of registered mail in public land matters within the jurisdiction of the Department of the Interior except where use of registered mail is specifically required by statute.

§ 1821.3 Oaths.

§ 1821.3-1 Elimination of the requirements.

(a) Written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require (43 U.S.C. 1211). All written statements in public land matters within the jurisdiction of the Department of the Interior required prior to June 3, 1948, by law, or Chapter I of this title, to be made under oath, need no longer be made under oath, except as provided in this paragraph.

(1) Affidavits must be furnished where required by parts 1840 and 1850.

(2) Final proofs required by R.S. 2294 (43 U.S.C. 254). (See §§ 1821.3-2, 2511.3-4 and 2521.6(d) of this chapter.)

(3) Statements as to the financial worth of individual sureties on bonds furnished in connection with leases, licenses or permits granted under the public land laws, known as *Affidavits of Justification*, must be made in affidavit form.

(b) Unsworn statements in public land matters are subject to Title 18, U.S.C., section 1001, which makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statement or representations as to any matter within its jurisdiction.

(c) False statements as to any material fact made by an applicant in connection with applications, allowance of which is discretionary with the authorized officer, are a proper basis for rejection of the applications.

§ 1821.3-2 Officers qualified.

(a) Oaths required under the homestead, and, desert-land acts may be made before the authorized officer of the proper office for the district embracing the land sought; or before any person authorized by the laws of or pertaining to the State to administer oaths.

§ 1821.4 Notations on applications.

§ 1821.4-1 Notation of rights-of-way.

(a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, a reference to such right-of-way should be made upon the original entry papers and upon the notice of allowance of the application issued to the entryman.

§ 1821.4-2 When notation required.

The authorized officer will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. See: Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Doughty (208 U.S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine.

§ 1821.5 Entries for lands in more than one land district.

§ 1821.5-1 Governing regulations.

Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 1821.5, 1823.4(a) and (b).

§ 1821.5-2 Applications and fees to be filed in each office.

Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land district, besides any other payment required by law. Each application should contain a proper reference to the other application.

§ 1821.5-3 Mining claims.

In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of § 1823.4(a).

CROSS REFERENCE: For mining claims, see subpart 3821 of this chapter.

§ 1821.6 Alaska.

§ 1821.6-1 Applications not to be rejected because executed more than 10 days prior to filing.

Section 1821.2-2 directs authorized officers to reject all applications to make entry which are executed more than 10 days prior to filing. Until such time as the transportation facilities in Alaska are improved the provisions of said section will not be held applicable to applications filed in the proper offices of Alaska.

[35 FR 9514, June 13, 1970. Redesignated at 49 FR 35300, Sept. 6, 1984]

§ 1821.6-2 Joint action to acquire public lands.

(a) Ten or more persons may file in the proper office applications in a single group under any one or more of the laws relating to the acquisition of lands in Alaska, including the Homestead Laws (30 Stat. 409; 32 Stat. 1028; 48 U.S.C. 371), Small Tract Laws (52 Stat. 609, 59 Stat. 467; 43 U.S.C. 682a), Home-Site Law (48 Stat. 809; 48 U.S.C. 461) and Town-Site Laws (R.S. 2380-2389, as amended, 43 U.S.C. 711-722; 26 Stat. 1099; 48 U.S.C. 355). Each application must be complete in itself except that information common to more than one application in a group need not be duplicated at length but may appear in or as an appendix to one such application and be adopted by reference made in the other applications.

(b) Where certain requirements must be met before an application to enter or purchase may be filed, a statement of intention to meet such requirements, signed by each prospective applicant, must be submitted in lieu of an application. Upon compliance with applicable requirements as to residence or otherwise, each such person must file an actual application as required by law.

(c) Each group of applications filed hereunder should be accompanied by two copies of a diagram showing the plan of development contemplated by the applicants. Each such application may describe the land covered by it in terms of a lot or tract as set forth in such diagram or the preliminary diagram specified in this paragraph. The diagram should include specific information as to the relative location and areal extent of each tract or site which it is contemplated will be devoted to school and other municipal or common purposes, to stores or other commercial enterprises, to housing and to agriculture and grazing. Assistance in the preparation of a preliminary diagram, which need not pertain to a particular tract of land, may be obtained by communicating in person or by mail with the U.S. Department of the Interior, Washington, DC, 20240. Such preliminary diagram may be used as the basis for the diagram to be filed with the group of applications and which must relate to specific land.

(d) Upon the filing of such a diagram by the applicants or their authorized representative, a petition or petitions may be filed requesting the withdrawal of the lands to be devoted to school and other municipal or common purposes.

(e) If any of the applications involve unsurveyed public lands such applications may also be accompanied by a petition, either joint or several, for the withdrawal of the lands in behalf of specified applicants, the survey, and, in appropriate cases, the classification under the Small Tract Law, of such lands. The filing of such applications confers of itself no right upon the applicants. If the withdrawal is made, and the land classified, applicants shall have the first right to acquire the interests for which they have applied, to the extent permitted by statute. Any application, entry or withdrawal made pursuant to this section shall be subject to all valid prior claims.

(f) Persons who propose to file applications in a group under paragraph (a) of this section, by a writing to be filed in the proper office, may designate a representative or representatives who may, at their direction and in their behalf, make the actual filing of the applications, previously executed by the applicants and accompanying and supporting documents; pay any or all fees and costs in connection therewith; and, in complete satisfaction of the requirements of § 2511.1(a) of this chapter, personally examine the lands sought to be entered and make and file a statement setting forth the information otherwise required of each individual applicant by § 2511.1-6(a) of this chapter.

(g) Where ten or more settlers are entitled by statute to request and receive a free survey of the lands upon which they have settled, they may file a joint petition stating the facts as to compliance with law by each of them. Such petition must be corroborated by two witnesses having knowledge of the facts.

(h) Where the costs of any survey made under this section are required by statute to be borne by one who seeks the survey, the necessary deposit for costs must be made. The individual applicant is ultimately responsible in such instances for the costs entailed in satisfying his request for such a survey, but persons who file joint or group petitions for such surveys may share the costs thereof in any proportion they may determine.

[35 FR 9514, June 13, 1970. Redesignated at 49 FR 35300, Sept. 6, 1984]

Subpart 1822—Payments and Repayments

AUTHORITY: Sec. 4, 21 Stat. 287, as amended; 43 U.S.C. 263.

SOURCE: 35 FR 9519, June 13, 1970, unless otherwise noted.

§ 1822.0-3 Authority for repayments.

The repayment of moneys received by the Government and covered into the U.S. Treasury, in connection with the disposal or attempted disposal of the public lands, is authorized by sections 2362 and 2363, Revised Statutes (43 U.S.C. 689, 690). The general laws providing for the return of such moneys are contained in the act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263) and the Act of June 14, 1960 (43 U.S.C. 1374).

§ 1822.1 Payments.

§ 1822.1-1 Amount.

(a) The amount of payments required in connection with the processing of any application, sale, entry, lease, permit, or other transaction governed by the regulations in this chapter are set forth in applicable regulations.

(b) The amount of payments required for copies and abstracts of records, including plats and diagrams showing the status of lands, are determined as provided in part 2 of this title.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.1-2 Forms of remittances.

(a) Subject to the condition set forth in paragraph (b) of this section, forms of remittances that will be accepted in payment of fees, rentals, purchase price, and other charges required by the regulations in this chapter include cash and currency of the United States and checks, money orders, and bank drafts made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the Government office.

(b) Personal checks are an acceptable form of remittance except where the regulations in this chapter specifically provide otherwise.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.2 Repayments.

§ 1822.2-1 Filing of applications.

Applications for repayment should be filed on a form approved by the Director with the authorized officer of the proper office.

§ 1822.2-2 Statement of grounds for repayment.

Where an application is filed, it should be accompanied by a statement by the applicant setting forth fully the grounds upon which repayment is claimed.

§ 1822.3 Act of June 16, 1880.

§ 1822.3-1 Statutory provisions.

(a) *Act of June 16, 1880.* The Act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263) provides for the repayment of fees, commissions, purchase money, and excesses paid in connection with entries of the public lands canceled for conflict, or where, from any cause, the entry was erroneously allowed. This clause directs that said moneys shall be repaid to the person who made such entry, or to his heirs or assigns, and it requires the surrender of the receipts issued and the execution of a proper relinquishment of all claims to the lands acquired under the invalid entry.

§ 1822.3-2 Applications.

(a) Claims for repayment should be made on a form approved by the Director or the equivalent thereof, which application must contain a statement that the title to the land under the invalid entry has not been sold or assigned and that the same has not become a matter of record.

(b) In cases where the entry has been made a matter of record, in the archives of the county recording officer, there should be added to the form of application the words "except as shown by accompanying evidence," in which event the evidence hereinafter required must be furnished.

(c) A duly executed relinquishment must be furnished by the applicant on a form approved by the Director.

(d) The relinquishment must be witnessed by two persons.

§ 1822.3-3 Recording of reconveyance.

(a) *When not required.* In all cases where patent has been issued, upon an invalid entry, a full reconveyance to the United States of all right and title to the land acquired under the patent and entry must be furnished, which deed must be recorded. If a certificate of the recording officer is produced showing that neither the entry nor the patent has been recorded, it is unnecessary to record the reconveyance in case the patent is surrendered.

(b) *When required.* If, however, the patent cannot be surrendered, or should the entry or patent have been recorded, it is necessary that the proper party or parties execute a full reconveyance to the United States and have the same recorded as indicated in the next following sections.

(c) *When quitclaim deed required.* Where title under an invalid entry or patent has become a matter of record, a duly executed quitclaim deed, relinquishing to the United States all right, title, and claim to the land, acquired under the entry, or patent, must accompany the application for repayment.

(d) *Recording of quitclaim deed.* The deed referred to in the preceding section must be duly recorded, and a certificate must also be produced from the proper recording officer of the county wherein the land is situated, showing that said deed is so recorded and that the records of his office do not exhibit any other conveyance or encumbrance of the title to the land.

(e) *Conformance to State laws.* The reconveyance to the United States must conform in every particular to the laws of the State in which the land is located relative to transfers of real property.

(f) *Reconveyance unnecessary.* If the applicant has also acquired the valid title conveyed by the United States, a reconveyance of the land is unnecessary, but a relinquishment, waiving all claim under the illegal entry, is required, together with corroborative evidence of the facts, preferably an abstract of title and a statement in full in support of the claim for repayment.

§ 1822.3-4 Repayment to heirs, executors, administrators.

(a) Where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained and must show that the parties applying are the heirs and the only heirs of the deceased.

(b) Proof of heirship should be made in the form of a statement, corroborated by two witnesses, setting forth the date of the death of the intestate; whether the intestate left surviving a husband or wife, as the case may be; the full name and age of such husband or wife; the names and ages of all children; and also state whether there is any issue of a deceased child or children. The statement should set forth all the facts, in order that the Bureau of Land Management may determine who are the legal heirs, in accordance with the laws of descent and distribution of the State where the land is situated.

(c) In case there are minor heirs not under the guardianship of a duly appointed guardian, and the amount to be repaid is $200 or less, the surviving parent may execute the application as the natural guardian of such heirs. Such application should be supplemented with a statement setting forth all the facts in detail.

(d) Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

(e) Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

§ 1822.3-5 Repayment to assignees.

(a) Those persons are assignees, within the meaning of the statutes authorizing the repayment of purchase money, who purchase the land after the entries thereof are completed and take assignments of the title under such entries prior to complete cancellation thereof, when the entries fail of confirmation for reasons contemplated by the law.

(b) Where applications are made by assignees, the applicants must show their right to repayment by furnishing properly authenticated abstracts of title, or the original deeds or instruments of assignment, or certified copies thereof.

(c) In the place of an abstract of title the applicant may furnish a certificate of the recording officer of the county in which the land is situated, showing all alienations or liens affecting title to the land in connection with the entry upon which the claim for repayment is based.

(d) The applicants must also show that they have not been indemnified by their grantors or assignors for the failure of title, and that title has not been perfected in them by their grantors through other sources.

(e) Where there has been a conveyance of the land and the original purchaser applies for repayment, he must show that he has indemnified his assignee or perfected the title in him through another source, or produce a full reconveyance to himself from the last grantee or assignee.

(f) To construe said statutes so as to recognize the assignment or transfer of the mere claim against the United States for repayment of purchase money, or fees and commissions, disconnected from a sale of the land or attempted transfer of title thereto, would be against the settled policy of the Government and repugnant to section 3477 of the Revised Statutes (31 U.S.C. 203). (2 Lawrence, First Comp. Dec. 264, 266, and 6 Dec. Comp. of the Treasury, 334, 359.)

(g) Assignees of land who purchase after entry are, in general, deemed entitled to receive the repayment when the lands are found to have been erroneously sold by the Government. But this rule does not apply to the repayment of double-minimum excesses. (First Comp. Dec. in case of Adrian B. Owens, Copp's Public Land Laws, 1890, vol. 2, p. 1238.)

§ 1822.3–6 Repayment to mortgagees.

(a) Mortgagees are not assignees within the meaning of the repayment laws, but may become such by pursuing the course suited to the particular case as follows:

(1) Where, after date of entry and prior to cancellation thereof, the land is mortaged and the mortgagee receives a sheriff's deed under foreclosure proceedings, the mortgagee becomes an assignee. (See 193 U.S. 651, 58 L. ed. 830; 28 L.D. 201, 30 L.D. 136.)

(2) Where a mortgage is executed prior to the cancellation of an entry, and a deed made to the mortgagee after such cancellation, the holder of such deed becomes the assignee. (See 26 L.D. 425.)

(b) In either case, complete evidence must be furnished to establish the applicant's right to repayment by producing the original deeds or instruments, or certified copies thereof showing all transactions, together with certified copies of the court proceedings.

Subpart 1823—Proofs and Testimony

AUTHORITY: R.S. 2478, 43 U.S.C. 1201.

SOURCE: 35 FR 9520, June 13, 1970, unless otherwise noted.

§ 1823.1 Time and place; appearances.

§ 1823.1–1 Time; place; continuance.

Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a.m. and 6 p.m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof cannot be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

§ 1823.1–2 Who may appear.

Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the manager for his consideration and action.

§ 1823.2 Procedures.

§ 1823.2–1 Examination of claimant and witnesses.

All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the authorized officer with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the authorized officer of any facts not set out in the testimony which in his judgment cast suspicion upon the good faith of the applicant or the validity of the entry.

§ 1823.2-2 Testimony to be taken separate and apart from and not within the hearing of the others.

The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

§ 1823.2-3 Advice concerning laws and penalties for false swearing.

Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

§ 1823.2-4 Fees; costs.

(a) Reducing testimony to writing. On all final proofs made before the officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the authorized officer the costs of reducing the testimony to writing, as determined by the authorized officer. No proof shall be accepted or approved until such payment has been made.

§ 1823.3 Transmittal of proof papers.

The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the authorized officer. In no case should the transmittal thereof be left to the claimant.

§ 1823.4 Proof on entries in more than one district.

(a) In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. If the notice is published correctly and the proof is satisfactory, the authorized officer who issued the notice for publication will issue final certificate for the portion within his land district on payment of the testimony fees and payment of the commissions and (if required) the purchase money due for the land in his district. He will then advise the authorized officer of the district wherein the remainder of the claim is located, who will, on receipt of the final commissions and purchase money (if any) due for the part in his district, issue final certificate for that portion without further proof.

(b) Should a proof be rejected by the office from which the notice of intention is issued the appeal or further showing must be filed in the office which rejected the proof.

§ 1823.5 Conduct of officers.

§ 1823.5-1 Prohibited activities.

No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

Subpart 1824—Publication and Posting of Notices

AUTHORITY: 20 Stat. 472; 43 U.S.C. 251.

SOURCE: 35 FR 9521, June 13, 1970, unless otherwise noted.

§ 1824.0-1 Purpose.

The object of the law requiring publication of notices of intended final proof on entries of public lands is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein or who have information concerning the illegality or invalidity of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Bureau of Land Management.

§ 1824.1 Selection of newspaper.

§ 1824.1-1 Qualifications of newspaper.

(a) A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed a qualified medium of notice unless it shall have been continuously published during an unbroken period of 6 months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (39 CFR part 132).

§ 1824.1-2 Discretionary authority of authorized officer; limitations.

(a) The law invests authorized officers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred.

(b) In designating papers in which notices of intention to make final proof under the Act of March 3, 1879 (20 Stat. 472; 43 U.S.C. 251) shall be published, the authorized officer shall designate only such reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by State laws for the publication of legal notices.

§ 1824.2 Payment for republication of notice.

(a) The law imposes upon managers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication.

(b) Neglect of the duty defined in paragraph (a) of this section, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the entire cost of such republication shall be borne by the Government. If an error is committed by the printer of the paper in which the notice appears, the manager may require such printer to correct his error by publishing the notice anew for the necessary length of time at his own expense, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

§ 1824.3 Frequency of publication.

(a) In many cases it is necessary to designate a daily paper in which to publish the notices of intention to submit final proof required to be given by homestead and desert land entrymen as well as the notices of location of other claims.

(b) The expense of publishing such notices for the prescribed period in every issue of a daily paper is often prohibitive, and the object of publication of such notices can be accomplished by a less number of insertions. Therefore, in all cases where the law does not specifically otherwise direct, publication will be made as follows:

(1) Where publication is required for 30 days, if the authorized officer designates a daily paper, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, in five consecutive issues, and if semiweekly, or triweekly, in any one of the weekly issues for five consecutive weeks.

(2) Where publication is required for 60 days, except in mining cases, if the authorized officer designates a daily

paper the notice should be published in the Wednesday issues for nine consecutive issues; if weekly in nine consecutive issues; if semiweekly or triweekly in any one of the weekly issues for nine consecutive weeks.

(c) Publication of notice in mining cases must be made in accordance with § 3862.4-1 of this chapter.

Subpart 1825—Relinquishments

Authority: R.S. 2478; 43 U.S.C. 1201.

§ 1825.1 When relinquished land becomes subject to further appropriation.

(a) Upon the filing in the proper office of the relinquishment of a homestead claim, the land, if otherwise available, will at once become subject to further application or other appropriation in accordance with the applicable public land laws. A provision to this effect is contained in section 1 of the Act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 202).

(b) Upon the filing of a relinquishment of an entry or claim (other than a homestead claim), or a lease, the land will not become subject to further application or other appropriation until the entry, claim or lease has been canceled pursuant to the relinquishment and the fact of the cancellation has been noted on the tract books in the proper office.

[35 FR 9521, June 13, 1970]

§ 1825.2 Relinquishment of right-of-way.

The relinquishment of an approved right-of-way may be conditioned upon the approval of a subsequent application, filed as an amendment to the approved right-of-way, or as an independent application, but conflicting in whole or in part with the approved right-of-way. Such a relinquishment will not be accepted and noted on the proper office tract books until action on the subsequent application is taken.

[35 FR 9521, June 13, 1970]

Subpart 1826—Reinstatement of Canceled Entries

Authority: R.S. 2478; 43 U.S.C. 1201.

§ 1826.1 Application for reinstatement.

(a) An application for the reinstatement of a canceled entry, while pending, operates to reserve the land covered thereby from other disposition.

(b) Applications for reinstatement of canceled entries must be filed in the proper office and must be executed by the entryman, his heirs, legal representatives, assigns, or transferees, as the case may require. If made by other than the entryman, such petition for reinstatement must fully set forth the nature and extent of petitioner's interest in the land, how acquired, and the names and addresses of any other person or persons who have or claim an interest therein. All petitions for reinstatement should set forth all facts and state clearly and concisely upon, what grounds reinstatement is urged. Such petition must be signed by the applicant.

(c) Applications for reinstatement of canceled entries executed by agents and attorneys will not be recognized.

(d) Should an application for reinstatement be filed not conforming to the foregoing, the authorized officer will promptly advise the party thereof, calling his attention to the defects and allow 15 days in which to file a proper application.

(e) All applications must be accompanied by an application service fee of $10 which is not returnable.

[35 FR 9521, June 13, 1970]

PART 1840—APPEALS PROCEDURES

Authority: R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1840.1 Cross reference.

For special procedural rules applicable to appeals from decisions of Bureau of Land Management officers or of administrative law judges, within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, see subpart E of part 4 of this title. Subpart A of part 4 and all of the general rules in subpart B of part 4 of this title not inconsistent with the special rules in subpart E of part 4 of this title are also applicable to such appeals procedures.

[36 FR 15119, Aug. 13, 1971]

PART 1850—HEARINGS PROCEDURES

Subpart 1850—Hearing Procedures; General

AUTHORITY: R.S. 2478, as amended; 43 U.S.C. 1201.

§ 1850.1 Cross reference.

For special procedural rules applica-
ble to hearings in public lands cases,
including hearings under the Federal
Range Code for Grazing Districts and
hearings in both Government and pri-
ate contest proceedings, within the
jurisdiction of the Board of Land Ap-
eals, Office of Hearings and Appeals,
ee subpart E of part 4 of this title.
Subpart A of part 4 and all of the gen-
ral rules in subpart B of part 4 of this
itle not inconsistent with the special
ules in subpart E of part 4 of this
itle are also applicable to such hear-
ngs, contest, and protest procedures.

36 FR 15119, Aug. 13, 1971]

ART 1860—CONVEYANCES, DISCLAIMERS AND CORRECTION DOCUMENTS

Subpart 1862—Patent Preparation and Issuance

ec.
62.0-3 Authority.
62.1 Contents.
62.2 Delivery.
62.3 Issuance of supplemental noncoal patents.
62.4 Patent to be withheld pending report from Forest Service.
62.5 Suits to vacate and annul patents.
62.6 Patent to issue after 2 years from date of manager's final receipt.

Subpart 1863—Other Title Conveyances

63.5 Title transfer to the Government.
63.5-1 Evidence of title.

Subpart 1864—Recordable Disclaimers of Interest in Land

64.0-1 Purpose.
64.0-2 Objectives.
64.0-3 Authority.
64.0-5 Definitions.
64.1 Application for issuance of a document of disclaimer.
Sec.
1864.1-1 Filing of application.
1864.1-2 Form of application.
1864.1-3 Action on application.
1864.1-4 Consultation with other Federal agencies.
1864.2 Decision on application.
1864.3 Issuance of document of disclaimer.
1864.4 Appeals.

Subpart 1865—Correction of Conveyancing Documents

1865.0-1 Purpose.
1865.0-2 Objective.
1865.0-3 Authority.
1865.0-5 Definitions.
1865.1 Application for correction of conveyancing documents.
1865.1-1 Filing of application.
1865.1-2 Form of application.
1865.1-3 Action on application.
1865.2 Issuance of corrected patent or document of conveyance.
1865.3 Issuance of patent or document of conveyance on motion of authorized officer.
1865.4 Appeals.

Subpart 1862—Patent Preparation and Issuance

AUTHORITY: R.S. 2450, as amended; 43 U.S.C. 1161.

SOURCE: 35 FR 9532, June 13, 1970, unless otherwise noted.

§ 1862.0-3 Authority.

(a) Patents for all grants of land shall be issued under the authority of the Director and signed in the name of the United States (Act of June 17, 1948, 62 Stat. 476; 43 U.S.C. 15). The patents shall be recorded in the Bureau of Land Management in books kept for that purpose.

(b) Where a conveyance of land is made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands or for any other purpose except exchange transactions involving lands under the jurisdiction of the Secretary of Agriculture, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Director, Bureau of Land Management is authorized and directed by section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872), if the deed of conveyance has been recorded, to execute a quit-claim deed of the conveyed land to the party or parties entitled thereto.

§ 1862.1 Contents.

(a) Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his death before making proof, to the statutory successor making the proof, provided by law.

(b) The recitals and description of land in patents will in all cases follow the manager's certificate of entry or location, as prescribed by law.

(c) The Bureau of Land Management will cause a new patent to be issued whenever it appears that a patent was regularly issued and the patent record on file in the Bureau of Land Management is imperfect in that it does not contain the name, or the initials, of the signing and the countersigning officers.

§ 1862.2 Delivery.

(a) *Issued on or after August 1, 1950.* When a patent issued on or after August 1, 1950, is ready for delivery it will be transmitted to the patentee or his or her recognized agent or successor in interest.

§ 1862.3 Issuance of supplemental noncoal patents.

(a) The Act of Congress approved April 14, 1914 (38 Stat. 335; 30 U.S.C. 82), authorized and directed the Secretary of the Interior:

> In cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March third, nineteen hundred and nine, and June twenty-second, nineteen hundred and ten, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents without such reservation.

(b) The Act is construed to affect all filings, locations, selections, or entries upon which patent or its equivalent had issued, or might thereafter issue, containing a reservation of the coal in the land to the United States under the Act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), or the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85 such land having subsequently been f nally classified as non-coal character.

§ 1862.4 Patent to be withheld pendi report from Forest Service.

In no claim, mineral or non-minera shall patent issue for land within a na tional forest until the Bureau of Lan Management is notified by, or ascer tains from, the Forest Service, tha the claim will not be contested. claim may be contested by the Fores Service at any time prior to the issu ance of patent.

§ 1862.5 Suits to vacate and annul patent

(a) Suits to vacate and annul patent shall only be brought within 6 year after the date of the issue of such pat ents (26 Stat. 1093; 43 U.S.C. 1166).

In cases of fraud the statute has bee construed not to commence to run "unt discovery of the fraud." Exploration Co Limited, et al. v. United States (247 U.S. 43 62 L. ed. 1200).

§ 1862.6 Patent to issue after 2 years fro date of manager's final receipt.

(a) The decision of the Suprem Court of the United States in Thoma J. Stockley et al., appellants, v. th United States, decided January 2, 192 (260 U.S. 532, 67 L. ed. 390) holds tha after the lapse of 2 years from th date of the issuance of the "receiver' receipt"[1] upon the final entry of an tract of land under the homestead, o desert-land laws, such entry, entitle to patent under the proviso to sectio 7 of the Act of March 3, 1891 (26 Stat 1098; 43 U.S.C. 1165), regardless o whether or not the manager's fina certificate has issued.

(b) The Supreme Court of th United States in Payne v. U.S. ex rel Newton (255 U.S. 438, 65 L. ed. 720) decided that Newton was entitled to a patent on his homestead entry unde the proviso to section 7 of the Act o March 3, 1891, 2 years having elapse from the date of the issuance of th receiver's final receipt upon fina entry, and there being no contest o protest pending against the validity o the entry, but stated that the purpose of the statute was:

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[1] The receipts formerly issued by the receivers are now issued by the managers.

> To require that the right to a patent which for 2 years has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay, and thus to transfer from the land officers to the regular judicial tribunals the authority to deal with any subsequent controversy over the validity of the entry, as would be the case if the patent were issued in the absence of the statute.

CROSS REFERENCES: For mineral reservations, see subpart 2093 of this chapter; for rights-of-way for roadways, see part 2800 of this chapter.

Subpart 1863—Other Title Conveyances

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

§ 1863.5 Title transfer to the Government.

§ 1863.5-1 Evidence of title.

Evidence of title, when required by the regulations, must be submitted in such form and by such abstracter or company as may be satisfactory to the Bureau of Land Management. A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract, in proper cases, when issued by a title company. A policy of title insurance when furnished must be free from conditions and stipulations not acceptable to the Department of the Interior. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit and where the interests of the Government will be sufficiently protected thereby.

[35 FR 9533, June 13, 1970]

CROSS REFERENCE: For evidence of title in mining cases, see § 3862.1-3 of this chapter.

Subpart 1864—Recordable Disclaimers of Interest in Land

SOURCE: 49 FR 35297, Sept. 6, 1984, unless otherwise noted.

§ 1864.0-1 Purpose.

The Secretary of the Interior has been granted discretionary authority by section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745) to issue recordable disclaimers of interests in lands. In general, a disclaimer may be issued if the disclaimer will help remove a cloud on the title to lands and there is a determination that such lands are not lands of the United States or that the United States does not hold a valid interest in the lands. These regulations implement this statutory authority of the Secretary.

§ 1864.0-2 Objectives.

(a) The objective of the disclaimer is to eliminate the necessity for court action or private legislation in those instances where the United States asserts no ownership or record interest, based upon a determination by the Secretary of the Interior that there is a cloud on the title to the lands, attributable to the United States, and that:

(1) A record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or

(2) The lands lying between the meander line shown on a plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States; or

(3) Accreted, relicted, or avulsed lands are not lands of the United States.

(b) A disclaimer has the same effect as a quitclaim deed in that it operates to estop the United States from asserting a claim to an interest in or the ownership of lands that are being disclaimed. However, a disclaimer does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in lands, nor does it operate to release or discharge any tax, judgement or other lien, or any other mortgage, deed or trust or other security interest in lands that are held by or for the benefit of the United States or any instrumentality of the United States.

(c) The regulations in this subpart do not apply to any disclaimer, release, quitclaim or other similar instrument or declaration, that may be issued pursuant to any provision of law other than section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745).

§ 1864.0-3 Authority.

Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), authorizes the Secretary of the Interior to issue a recordable disclaimer, where the disclaimer will help remove a cloud on the title of such lands, if certain determinations are made and conditions are met.

§ 1864.0-5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) *Accreted lands* have the meaning imparted to them by applicable law. In general, they are lands that have been gradually and imperceptibly formed along the banks of a body of water by deposition of water-borne soil.

(c) *Avulsed lands* have the meaning imparted to them by applicable law. In general, they are lands that have been uncovered by a relatively sudden change in alignment of the channel of a river, or by a comparable change in some other body of water, or that remain as uplands following such a change, or that are located in the bed of the new channel.

(d) *Actual shoreline* means the line which is washed by the water wherever it covers the bed of a body of water at its mean high water level.

(e) *Lands* means lands and interests in lands now or formerly forming a part of the reserved or unreserved public lands of the contiguous 48 States and Alaska and as to any coastal State, includes submerged lands inside of the seaward boundary of the State.

(f) *Meander line* means a survey line established for the purpose of representing the location of the actual shoreline of a permanent natural body of water, without showing all the details of its windings and irregularities. A meander line rarely runs straight for any substantial distance. It is established not as a boundary line but in order to permit calculation of the quantity of lands in the fractional sections remaining after segregation of the water area.

(g) *Relicted lands* have the meaning imparted that term by applicable law. In general, they are lands gradually uncovered when water recedes permanently.

§ 1864.1 Application for issuance of a document of disclaimer.

§ 1864.1-1 Filing of application.

(a) Any present owner of record may file an application to have a disclaimer of interest issued if there is reason to believe that a cloud exists on the title to the lands as a result of a claim or potential claim by the United States and that such lands are not subject to any valid claim of the United States.

(b) Prior to the acceptance for filing of an application under this subpart, the authorized officer should discuss the proposal with the proposed applicant to determine if the regulations in this subpart apply.

(c) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2-1(d) of this title.

§ 1864.1-2 Form of application.

(a) No specific form of application is required.

(b) A nonrefundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) A legal description of the lands for which a disclaimer is sought. The legal description shall be based on either an official United States public land survey or, in the absence of or inappropriateness (irregularly shaped tracts) of an offical public land survey, a metes and bounds survey (whenever practicable, tied to the nearest corner of an official public land survey), duly certified in accordance with State law, by the licensed civil engineer or surveyor who executed or supervised the execution of the metes and bounds survey. A true copy of the field notes and plat of survey shall be attached to and made a part of the application. If reliance is placed in whole or in part on an official United States public land survey, such survey shall be ade-

quately identified for record retrieval purposes;

(2) The applicant's name, mailing address, and telephone number and the names addresses and telephone numbers of others known or believed to have or claim an interest in the lands;

(3) All documents which show to the satisfaction of the authorized officer the applicant's title to the lands;

(4) As complete a statement as possible concerning:

(i) The nature and extent of the cloud on the title, and

(ii) The reasons the applicant believes:

(A) The record title interest of the United States in the lands included in the application has terminated by operation of law or is otherwise invalid, including a copy or legal citation of relevant provisions of law; or

(B) The lands between the meander line shown on the plat of survey approved by the Bureau of Land Management or its predecessors and the actual shoreline of a body of water are not lands of the United States, including as documentation an official plat of survey or a reference to a date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue; or

(C) The lands are accreted, relicted or avulsed and are no longer lands of the United States, including submission for the uplands portion of the body of water affected a copy of an official plat of survey or a reference to it by date of filing or approval and, if the applicant elects, any non-Federal survey plats related to the issue;

(5) Any available documents or title evidence, such as historical and current maps, photographs, and water movement data, that support the application;

(6) The name, mailing address, and telephone number of any known adverse claimant or occupant of the lands included in the application;

(7) Any request the applicant may have that the disclaimer be issued in a particular form suitable for use in the jurisdiction in which it will be recorded; and

(d) Based on prior discussions with the applicant, the authorized officer may waive any or all of the aforementioned items if in his/her opinion they are not needed to properly adjudicate that application.

§ 1864.1-3 Action on application.

(a) An application shall be denied by the authorized officer if:

(1) More than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States;

(2) The application pertains to a security interest or water rights; or

(3) The application pertains to trust or restricted Indian lands;

(b) The authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit needed to cover the administrative costs of processing the application and issuing a disclaimer.

(c) The applicant shall submit a deposit in an amount determined by authorized officer.

(d) If the application is concerned with what may be omitted lands, it shall be processed in accordance with the applicable provisions of part 9180 of this title. If the application is determined by the authorized officer to involve omitted lands, the applicant shall be so notified in writing.

§ 1864.1-4 Consultation with other Federal agencies.

If the lands included in the application are under the administrative jurisdiction of a Federal agency other than the Department of the Interior or if the issuance of a disclaimer for the lands would, to the Bureau of Land Management's knowledge, directly affect another Federal agency, the authorized officer shall refer the application to that Federal agency for comment.

§ 1864.2 Decision on application.

(a) The authorized officer shall notify the applicant and any party adverse to the application, in writing, on the determination of the authorized officer on whether or not to issue a disclaimer. Prior to such notification, the authorized officer shall issue to the applicant a billing that includes a full and complete statement of the cost incurred in reaching such determination, including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs exceed the amount of the deposit required of the applicant under this subpart, the applicant shall be informed that a payment is required for the difference between the actual costs and the deposit. The notification shall also require that payment be made within 120 days from the date of mailing of the notice. If the deposit exceeds the administrative costs of issuing the disclaimer, the applicant shall be informed that a credit for or a refund of the excess will be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application. Before the authorized officer makes a determination to issue a disclaimer, he/she shall publish notice of the application, including the grounds supporting it, in the FEDERAL REGISTER. Publication in the FEDERAL REGISTER shall be made at least 90 days preceding the issuance of a decision on the disclaimer. Notice shall be published in a newspaper located in the vicinity of the lands covered by the application once a week for 3 consecutive weeks during the 90-day period set out herein. Neither publication shall be made until the applicant has paid the administrative costs.

§ 1864.3 Issuance of document of disclaimer.

Upon receipt of the payment required by §§ 1864.1-2(b), 1864.1-3(c) and 1864.2 of this title and following, by not less than 90 days, the publication required by § 1864.2 of this title, the authorized officer shall make a decision upon the application, and if the application is allowed, shall issued to the applicant an instrument of disclaimer.

§ 1864.4 Appeals.

An applicant or claimant adversely affected by a written decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR part 4.

Subpart 1865—Correction of Conveyancing Documents

SOURCE: 49 FR 35299, Sept. 6, 1984, un
otherwise noted.

§ 1865.0-1 Purpose.

The purpose of these regulations
to implement section 316 of the Fed
al Land Policy and Management A
of 1976 (43 U.S.C. 1746), which affor
to the Secretary of the Interior disc
tionary authority to correct errors
patents and other documents of co
veyance pertaining to the disposal
the public lands of the United Stat
under laws administered through th
Bureau of Land Management or i
predecessors.

§ 1865.0-2 Objective.

The objective of a correction doc
ment is to eliminate from the chain o
title errors in patents or other doc
ments of conveyance that have bee
issued by the United States under law
administered by the Bureau of Lan
Management or its predecessors an
that pertain to the disposal of th
public lands or of an interest therein

§ 1865.0-3 Authority.

Section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746) authorizes the Secretary of the Interior to correct patents and other documents of conveyance issued at any time pursuant to the laws relating to the disposal of the public lands where the Secretary of the Interior deems it necessary or appropriate to do so in order to eliminate errors.

§ 1865.0-5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(b) *Error* means the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law.

(c) *Patents or other documents of conveyance* means a land patent, a deed or some other similar instrument in the chain of title to realty that has been issued by the United States under laws administered by the Bureau of Land Management or its predecessors pertaining to the disposal of the public lands of the United States or of an interest therein. It also includes interim conveyances issued under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), and approvals and tentative approvals issued under the Act of July 7, 1958, as amended (72 Stat. 339).

(d) *Lands* mean lands or interest in lands.

§ 1865.1 Application for correction of conveyancing documents.

§ 1865.1-1 Filing of application.

(a) Any claimant asserting ownership of lands described in and based upon a patent or other document of conveyance containing an alleged error may file an application to correct the alleged error.

(b) An application shall be filed in writing with the proper Bureau of Land Management office as listed in § 1821.2-1(d) of this title.

§ 1865.1-2 Form of application.

(a) No specific form of application is required.

(b) A non-refundable fee of $100 shall accompany the application.

(c) Each application shall include:

(1) The name, mailing address, and telephone number of the applicant and any others known to the applicant that hold or purport to hold any title or other interest in, lien on or claim to the lands described in the patent or other document of conveyance containing the alleged error as to which the corrective action is requested, and if the error involves a misdescription, the land that would be affected by the corrective action requested;

(2) All documents which show the applicant's title to the lands included in the application;

(3) A certified copy of any patent or other document conveying any lands included in the application to the applicant or predecessor(s) in interest; and

(4) As complete a statement as possible concerning:

(i) The nature and extent of the error;

(ii) The manner in which the error can be corrected or eliminated; and

(iii) The form in which it is recommended the corrected patent or document of conveyance be issued.

§ 1865.1-3 Action on application.

The authorized officer, upon review of the factual data and information submitted with the application, and upon a finding that an error was made in the patent or document of conveyance and that the requested relief is warranted and appropriate, shall give written notification to the applicant and make a reasonable effort to give written notification to any others known to have or believed to have or claim an interest in the lands that a corrected patent or document of conveyance shall be issued. The notification shall include a description of how the error is to be corrected or eliminated in the patent or document of conveyance. The notice shall require the applicant to surrender the original patent or other document of conveyance to be corrected. Where such original document is unavailable, a statement setting forth the reasons for its unavailability shall be submitted in lieu of the original document. The notice may include a requirement for quitclaiming to the United States the lands erroneously included, and shall specify any terms and conditions required for the quitclaim.

§ 1865.2 Issuance of corrected patent or document of conveyance.

Upon the authorized officer's determination that all of the requirements of the Act for issuance of a corrected patent or document of conveyance have been met, the authorized officer shall issue a corrected patent or document of conveyance.

§ 1865.3 Issuance of patent or document of conveyance on motion of authorized officer.

The authorized officer may initiate and make corrections in patents or other documents of conveyance on his/her own motion, if all existing owners agree.

§ 1865.4 Appeals.

An applicant or claimant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to 43 CFR part 4.

PART 1870—ADJUDICATION PRINCIPLES AND PROCEDURES

Subpart 1871—Principles

Sec.

1871.0-3 Authority.
1871.1 Equitable adjudication.
1871.1-1 Cases subject to equitable adjudication.

Authority: R.S. 2450; 43 U.S.C. 1161.

Source: 35 FR 9533, June 13, 1970, unless otherwise noted.

Subpart 1871—Principles

§ 1871.0-3 Authority.

The Act of September 20, 1922 (42 Stat. 857; 43 U.S.C. 1161-1163), as modified by section 403 of Reorganization Plan No. 3 of 1946 (60 Stat. 1100), reads as follows:

> Sec. 1161. The Secretary of the Interior, or such officer as he may designate, is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be approved by the Secretary of the Interior, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.
>
> Sec. 1162. Every such adjudication shall be approved by the Secretary of the Interior and shall operate only to divest the United States of the title to the land embraced thereby, without prejudice to the rights of conflicting claimants.
>
> Sec. 1163. Where patents have been already issued on entries which are approved by the Secretary of the Interior, the Secretary of the Interior, or such officer as he may designate, upon the canceling of the outstanding patent, is authorized to issue new patent, on such approval, to the perso who made the entry, his heirs or assigns.

§ 1871.1 Equitable adjudication.

§ 1871.1-1 Cases subject to equitable adj dication.

The cases subject to equitable adju dication by the Director, Bureau c Land Management, cover the follow ing:

(a) *Substantial compliance:* All class es of entries in connection with whicl the law has been substantially com plied with and legal notice given, bu the necessary citizenship status not ac quired, sufficient proof not submittec or full compliance with law not effect ed within the period authorized b law, or where the final proof testimo ny, or affidavits of the entryman o claimant were executed before an offi cer duly authorized to administe oaths but outside the county or lan district, in which the land is situatec and special cases deemed proper b the Director, Bureau of Land Manage ment, where the error or informalit is satisfactorily explained as being th result of ignorance, mistake, or som obstacle over which the party had n control, or any other sufficient reasor not indicating bad faith there being n lawful adverse claim.

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Subpart 1881—Payments in Lieu of Taxes

Sec.

1881.0-1 Purpose.
1881.0-3 Authority.
1881.0-5 Definitions.
1881.1 Procedures.
1881.1-1 Procedures, general.
1881.1-2 Procedures, Section 1 payments.
1881.1-3 Procedures, Section 3 payments.
1881.1-4 Procedures, absence of information.
1881.1-5 Requirement to report enactmen of State distribution legislation.
1881.2 Use of payments.
1881.3 Protests.
1881.4 Appeals.

Subpart 1882—Mineral Development Impact Relief Loans

1882.0-1 Purpose.

Sec.
1882.0–2 Objective.
1882.0–3 Authority.
1882.0–5 Definitions.
1882.1 Loan fund, general.
1882.2 Qualifications.
1882.3 Application procedures.
1882.4 Allocation of funds.
1882.5 Terms and conditions.
1882.5–1 Tenure of loan.
1882.5–2 Interest rate.
1882.5–3 Limitation on amount of loans.
1882.5–4 Loan repayment.
1882.5–5 Security for a loan.
1882.5–6 Use of loan.
1882.5–7 Nondiscrimination.
1882.5–8 Additional terms and conditions.
1882.6 Loan renegotiation.
1882.7 Inspection and audit.

Subpart 1881—Payments in Lieu of Taxes

Authority: Pub. L. 94–565, 90 Stat. 2662, 31 U.S.C. 1601–1607.

Source: 42 FR 51580, Sept. 29, 1977, unless otherwise noted.

§ 1881.0–1 Purpose.

The regulations establish procedures for making payments in lieu of taxes to units of local government for certain Federal lands within their boundaries.

§ 1881.0–3 Authority.

The authority for these regulations is the Act of October 20, 1976, 31 U.S.C. 6901–6907, hereinafter referred to as *the Act.*

[42 FR 51580, Sept. 29, 1977, as amended at 50 FR 1305, Jan. 10, 1985]

§ 1881.0–5 Definitions.

(a) A *government,* as that term is used by the Bureau of the Census for general statistical purposes, is an organized entity having substantial autonomy and whose officers are either popularly elected or appointed by publicly elected officials. Other indicia of governmental character include (1) a high degree of responsibility to the public for performance of duties of a governmental nature, (2) power to levy taxes, and (3) power to issue debt paying interest exempt from Federal taxation.

(b)(1) *Unit of general local government* means a unit of that type of government which, within its state, is the principal provider of governmental services affecting the use of entitlement lands. Those services of government include (but are not limited to) maintenance of land records, police protection, fire protection, taxation, land use planning, search and rescue and road construction. Ordinarily, a unit of general government will be a county. However, where a smaller unit of government is the principal provider of governmental services affecting the use of public lands within a state, the smaller unit, even though within a larger unit of government, will be considered a general unit of government and will receive payments under the Act. These units of general government will ordinarily be *towns* or townships within states where county governments are nonexistent or nearly nonexistent. The term *unit of general government* also includes:

(i) Governments with the functions of a unit of general local government in that state combined with another type of government such as city, township, parish, borough or county, e.g., a city and county as in the City and County of Denver.

(ii) Cities located outside of any of the units of general local government for that state and administering functions commonly performed by those units of general local government.

(iii) Alaskan boroughs in existence on October 20, 1976, and, beginning October 1, 1978, for purposes of payment under section 3 of the Act, a unit of local government in Alaska located outside of boundaries of an organized borough which acts as the collecting and distributing agency for real property taxes.

(iv) The Governments of the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(2) The term *unit of general local government* excludes single purpose or special purpose units of local government such as school districts or water districts.

(c) (1) *Entitlement lands* are lands owned by the United States which are:

(i) Within the National Park System including wilderness areas;

(ii) Within the National Forest System including wilderness areas and also including those areas of Superior

National Forest, Minnesota, set forth in 16 U.S.C. 577d and 577d-1 (1970);

(iii) Administered by the Secretary of the Interior through the Bureau of Land Management;

(iv) Water resource projects administered by the Bureau of Reclamation or Corps of Engineers;

(v) Dredge disposal areas administered by the Corps of Engineers;

(vi) Beginning October 1, 1978, lands on which are located semiactive or inactive installations, not including industrial installations, retained by the Army for mobilization purposes and for support of reserve component training;

(vii) Beginning October 1, 1978, lands designated as *reserve areas*, which means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Fish and Wildlife Service. For the purpose of these regulations, reserve areas also include lands in Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, which were initially administered by the United States through an act of Congress, Executive Order, Public Land Order or Proclamation of the President and administered, either solely or primarily, by the Secretary through the Service; or

(viii) Lands located in the vicinity of Purgatory River Canyon and Pinon Canyon, Colorado, that were acquired by the United States after December 23, 1981, to expand the Fort Carson military installation.

(2) *Entitlement lands* do not include:

(i) Lands that were owned or administered by a State or unit of local government and which, at the time title was conveyed to the United States, were exempt from payment of real estate taxes. However, beginning October 1, 1978, this exclusion shall not apply to any entitlement land which is or was acquired by a State or unit of local government from private parties for the purpose of donation of such land to the Federal Government and which is or was donated within eight years of the date of acquisition thereof by the State or unit of local government.

(ii) Any land for which any money was paid to a unit of local government pursuant to the Act of August 28, 1937 (50 Stat. 875) or the Act of May 24, 1939 (53 Stat. 753) in that fiscal year.

(d) *Money transfers* means money or cash payments received by units of local government under the statutes in section 4 of the Act, 31 U.S.C. 1604. The term does not include payments made to a State and distributed by the State directly to a school district or other single or special purpose governmental entities, or payments distributed by the State to the unit of local government which the unit of local government is required by State law to pass on to a school district or other independent single or special purpose governmental entity.

(e) *Authorized officer* means that official within the Bureau of Land Management delegated the authority to carry out the provisions of the Act.

(31 U.S.C. 1601-1607; 92 Stat. 1319, 1321-1322; 92 Stat. 171)

[42 FR 51580, Sept. 29, 1977, as amended at 45 FR 47619, July 15, 1980; 48 FR 42817, Sept. 20, 1983; 50 FR 1305, Jan. 10, 1985]

§ 1881.1 Procedures.

§ 1881.1-1 Procedures, general.

(a) The minimum payment shall be $100 to any one unit of local government under both sections 1 and 3 of the Act, in aggregate.

(b) If money actually appropriated by Congress for distribution during any fiscal year is insufficient to provide full payment to each unit of local government, all payments due to eligible recipients in that fiscal year shall be reduced proportionally, to the extent determined necessary by the authorized officer.

§ 1881.1-2 Procedures, Section 1 payments.

(a) The authorized officer shall determine which governments are units of general local government eligible to receive payments under section 1 of the Act in accordance with section 6(c) of the Act and the definitions in § 1881.0-5 of these regulations. In resolving questions about the eligibility of any unit of general local government and the status of entitlement lands, the authorized officer may consult with the Bureau of the Census, officials of the appropriate State and local government, and officials of the agency administering the entitlement lands.

(b) In order to determine which units of local government are entitled to receive payments under the act, the authorized officer shall obtain the data necessary for making computations pursuant to the formula in section 2 of the Act as follows:

(1) The amount of entitlement lands within the boundaries of each unit of local government as of the last day of the fiscal year preceding the fiscal year for which the payment is to be made and the amount of payments made directly to those governments pursuant to the laws listed in section 4 of the Act shall be obtained from the administering Federal agencies;

(2) The amount of money transfers made by the State to eligible units of local government pursuant to the laws listed in section 4 of the Act shall be obtained from the Governor or his designated officials;

(3) The population of each unit of local government shall be obtained from current Bureau of the Census statistics.

(c) The authorized officer shall compute and certify the amount of payment to be made each unit of local government based on (1) the formula and limitations set forth in section 2 of the Act and (2) the amount of actual appropriations.

(d) No computation will be certified by the authorized officer for payment until the Governor of the State in which the unit of local government is located or his delegate has provided the authorized officer with:

(1) A statement of the amount of all money transfers received during the previous fiscal year[1] by each entitled unit of local government from the State from revenues derived under those laws listed in section 4 of the Act; and

(2) A written certification by a State Auditor, an independent Certified Public Accountant or an independent public accountant, licensed on or before December 31, 1970, that the statements furnished by the Governor or his delegate have been audited in accordance with auditing standards established by the Comptroller General of the United States in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions,* available through Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, and in accordance with the audit guide for payments in lieu of taxes issued by the Department of the Interior. Such audit certifications will be required for statements submitted for the computation of payments authorized by section 1 of the Act for:

(i) Payments to be made for fiscal years beginning on or after October 1, 1979; and

(ii) Prior fiscal year payments as may be required by the Office of the Inspector General, Department of the Interior.

The Authorized Officer may waive the requirement for audit certifications where information contained in statements furnished by the Governor or his delegate is verified by the General Accounting Office, the Office of the Inspector General, or other qualified Federal Officials, or where such verification is determined to be unnecessary.

(e) The Office of the Inspector General, U.S. Department of the Interior, will provide appropriate assistance to the Director, Bureau of Land Management to facilitate the implementation and administration of the audit requirements specified in paragraph (d)(2) of this section pursuant to the provisions of sections 4 and 6 of the Inspector General Act of 1978 (92 Stat. 1102-1103, and 1104-1105). The Office of the Inspector General will develop appropriate audit guides to be used by State auditors, independent Certified Public Accountants or an independent public accountant, licensed on or before December 31, 1970, for auditing the statements of the Governors or their delegates and submitting audit certifications specified in paragraph (d)(2) of this section. Copies of the audit guides will be furnished to the Governor or his delegate each year. Questions pertaining to the use or application of this guide should be referred to the Office of Inspector General, U.S. Department of the Interior, Washington, D.C. 20240.

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[1] For fiscal year 1977, the transition quarter, July 1, 1976 to September 30, 1976, shall be excluded.

(f) If a unit of general local government eligible for payments under this part reorganizes, the authorized officer shall, for the fiscal year in which the reorganization occurred, calculate payments as if the reorganization had not occurred and issue any payments due under this part jointly to all of the newly formed units of general government.

(31 U.S.C. 1601-1607, (92 Stat. 1319, 1321-1322), (92 Stat. 171))

[42 FR 51580, Sept. 29, 1977, as amended at 45 FR 47619, July 15, 1980; 50 FR 1305, Jan. 10, 1985]

§ 1881.1-3 Procedures, Section 3 payments.

(a) The authorized officer shall make payments to qualified units of local government under section 3 of the Act, provided that the administering agencies supply information as follows:

(1) Acreage or interests in land for which payments are authorized within the boundaries of each qualified unit of local government; and

(2) Such other information as may be required to certify payments to qualified units of local government.

(b) Counties receiving payments in excess of $100 shall distribute those payments to affected units of local government and affected school districts, in accordance with section 3 of the Act, within 90 days of the receipt of such payment. Distribution shall be in proportion to the tax revenues assessed and levied by the affected units of local government and school districts in the Federal fiscal year prior to acquisition of the entitlement lands by the Federal Government. The Redwoods Community College District in California shall be considered an affected school district.

(c) A certification by the county involved that appropriate distribution of funds has been made shall be submitted to the authorized officer within 120 days after the date that payments are received.

(d) In accordance with 106(c) of the Act of March 27, 1978 (92 Stat. 171), payment of the difference, if any, between the amounts actually paid during each of the five fiscal years immediately following the fiscal year in which lands or interests therein were acquired for addition to the Redwoods National Park pursuant to said Act of March 27, 1978, and lands acquired in the Lake Tahoe Basin under the Act of December 23, 1980 (Pub. L. 96-586), and 1% of the fair market value of such lands and interests therein at the time of their acquisition shall be deferred, unless the amount not paid, or any part of such amount, was not paid due to an insufficiency of appropriated funds, commencing with the sixth fiscal year following acquisition, the amount deferred shall be paid to eligible counties annually in amounts that reflect the limitations of section 3(c)(2) of the Act. Such payments shall be made until the total amount deferred during the first five years has been paid.

(31 U.S.C. 1601-1607, (92 Stat. 1319, 1321-1322), (92 Stat. 171))

[42 FR 51580, Sept. 29, 1977, as amended at 45 FR 47619, July 15, 1980; 50 FR 1305, Jan. 10, 1985]

§ 1881.1-4 Procedures, absence of information.

The authorized officer shall certify payments under the Act only to the extent sufficient data is available to determine the amount due the qualified units of local government.

§ 1881.1-5 Requirement to report enactment of State distribution legislation.

(a) Section 6907 of the Act provides that a single payment may be made to a State for reallocation and redistribution to units of general local government other than the principal provider of services as determined by the Secretary. If the State decides to avail itself of this provision, it shall comply with the following conditions:

(1) The State shall notify the authorized officer that it has enacted legislation that conforms to section 6907 of the Act and within 60 days of its enactment, provide the authorized officer with a copy of the legislation

and the name and address of the State office to which payment is to be made.

(2) The State legislation shall conform to the requirements of the Act, particularly section 6907(a).

(b) If the authorized officer finds that a State's legislation complies with the conditions set forth in paragraph (a) of this section, he/she shall notify the State that a single payment will be made to the designated State government office beginning with the Federal fiscal year following the fiscal year in which the conforming legislation was approved by the authorized officer. The authorized officer shall provide the State with appropriate information that identifies the entitlement lands data on which the payments are based.

(c)(1) If a State that has enacted conforming legislation as described in paragraphs (a) and (b) of this section later repeals or amends that legislation, the State shall immediately notify the authorized officer of such change(s), in writing, and shall furnish the authorized officer a copy of the legislation.

(2) If a State's conforming legislation is repealed or if the authorized officer finds from a review of the legislation that it is so altered as a result of amendments that it no longer complies with the conditions stated in paragraph (a) of this section, he/she shall notify the State office designated under paragraph (a)(1) of this section that payment shall be made directly to eligible units of local government. These payments shall begin with the Federal fiscal year in which a copy of the State's legislation repealing or amending the State's conforming legislation is received by the authorized officer. However, if a copy of the State's repealing or amending legislation is received after July 1, payments made directly to eligible units of local government shall not begin until the subsequent Federal fiscal year.

[50 FR 1305, Jan. 10, 1985]

§ 1881.2 Use of payments.

The monies paid to entitled units or local government may be used for any governmental purpose, except as noted in § 1881.1-3(b) of this part.

§ 1881.3 Protests.

(a) Computation of payments shall be based upon Federal land records, population data from the Bureau of the Census, payments made to units of local government through State government under the laws listed in section 4 of the Act as reported by State Governors, Federal payments made directly to units of local government under the laws listed in section 4 of the Act as reported by the disbursing Federal agency.

(b) Any affected unit of local government may protest the results of the computations of its payment to the authorized officer.

(c) Any protesting unit of local government shall submit sufficient evidence to show error in the computations or the data on which the computations are based.

(d) All protests to the authorized officer shall be filed by the first business day of the calendar year following the end of the fiscal year for which the payments were made.

(e) The authorized officer shall consult with the affected unit of local government and the administering agency to resolve conflicts in land records and other data sources.

§ 1881.4 Appeals.

Any affected unit of local government whose protest has been rejected by the authorized officer may appeal to the Interior Board of Land Appeals pursuant to the provisions of 43 CFR part 4.

Subpart 1882—Mineral Development Impact Relief Loans

AUTHORITY: Sec. 317(c), Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740) (90 Stat. 2767).

SOURCE: 43 FR 57887, Dec. 11, 1978, unless otherwise noted.

§ 1882.0-1 Purpose.

The purpose of this subpart is to establish procedures to be followed in the implementation of a program under section 317 of the Federal Land Policy and Management Act to make loans to qualified States and their political subdivisions.

§ 1882.0-2 Objective.

The objective of the program is to provide financial relief through loans to those States and their political subdivisions that are experiencing adverse social and economic impacts as a result of the development of Federal mineral deposits leased under the provisions of the Act of February 25, 1920, as amended.

§ 1882.0-3 Authority.

Section 317(c) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), authorizes the Secretary of the Interior to make loans to States and their political subdivisions to relieve social or economic impacts resulting from the development of Federal minerals leased under the Act of February 25, 1920 (30 U.S.C. 181 *et seq.*).

§ 1882.0-5 Definitions.

As used in this subpart, the term:

(a) *Secretary* means the Secretary of the Interior.

(b) *Director* means the Director, Bureau of Land Management.

(c) *Act* means the Act of February 25, 1920, as amended (30 U.S.C. 181).

§ 1882.1 Loan fund, general.

Funds appropriated by Congress for loans for relief of adverse social and economic impacts resulting from the development of Federal mineral deposits leased and developed under the Act may be loaned to those States and their political subdivisions who qualify under this subpart. Such loans may be used for: (a) Planning, (b) construction and maintenance of public facilities, and (c) provisions for public services.

§ 1882.2 Qualifications.

(a) Any State receiving payments from the Federal Government under the provisions of section 35 of the Act or any political subdivision of such a State that can document to the satisfaction of the Director that it has suffered or will suffer adverse social and economic impacts as a result of the leasing and development of Federal mineral deposits under the provisions of the Act shall be considered qualified to receive loans made under this subpart.

(b) A loan to a qualified political subdivision of a State receiving payment from the Federal Government under the provisions of section 35 of the Act shall be conditioned upon a showing of proof, satisfactory to the Director, by the political subdivision that it has legal authority to pledge funds payable to the State under section 35 of the Act in sufficient amounts to secure the payment of the loan.

§ 1882.3 Application procedures.

No later than October 1 of the fiscal year in which a loan is to be made, the State or its political subdivision shall submit to the Director a letter signed by the authorized agent requesting a loan. The authorized agent shall furnish proof of authority to act for the State or political subdivision with the application. Such letter shall constitute a formal application for a loan under this subpart and shall contain the following:

(a) The name of the State or political subdivision requesting the loan.

(b) The amount of the loan requested.

(c) The name, address, and position of the person in the State or political subdivision who is to serve as contact on all matters concerning the loan.

(d) A description and documentation of the adverse social and economic impacts suffered as a result of the leasing and development of Federal mineral deposits.

(e) An analysis and documentation of the additional expenses generated as a result of the leasing and development of Federal minerals.

(f) Proposed uses of the funds derived from the loan.

(g) Evidence that the loan and repayment provisions are authorized by State law.

(h) The Director may request any additional information from the applicant that is needed to properly act on the loan application. The applicant shall furnish such additional information in any form acceptable to the applicant and the Director. No loan shall be granted unless such additional information is timely received by the Director.

§ 1882.4 Allocation of funds.

If applications for loans exceed the funds appropriated for such purpose, loans shall be allocated among the States and their political subdivisions in a fair and equitable manner, after consultation with the Governors of the affected States, giving priority to those States and political subdivisions suffering the most severe social and economic impacts. The allocation of funds under this section shall be the final action of the Department of the Interior.

§ 1882.5 Terms and conditions.

§ 1882.5-1 Tenure of loan.

Loans shall be for a period not to exceed 10 years. Loan documents shall include a schedule of repayment showing the amount of the principal and interest due on each installment.

§ 1882.5-2 Interest rate.

Loans shall bear interest at a rate equivalent to the lowest interest rate paid on an issue of at least $1 million of bonds exempt from Federal taxes of the applicant State or any agency thereof within the calendar year immediately preceding the year of the loan. Proof of each rate shall be furnished by an applicant with its application.

§ 1882.5-3 Limitation on amount of loans.

Total outstanding loans under this program for qualified States or their political subdivisions shall not exceed the total amount of the qualified State's projected mineral revenues under the Act for the 10 years following. The total outstanding loans shall be the sum of the unpaid balance on all such loans made to a qualified State and all of its qualified political subdivisions.

§ 1882.5-4 Loan repayment.

Loan repayment shall be by withholding mineral revenues payable to the qualified State for itself or its political subdivisions under the Act until the full amount of the loan and interest have been recovered.

§ 1882.5-5 Security for a loan.

The only security for loans made under this subpart shall be the mineral revenues received by a qualified State or its political subdivisions under the Act. Loans made under this subpart shall not constitute an obligation upon the general property or taxing authority of the qualified recipient.

§ 1882.5-6 Use of loan.

A loan made under this subpart may be used for the non-Federal share of the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under the Act.

§ 1882.5-7 Nondiscrimination.

No person shall, on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or part with funds made available under this subpart.

§ 1882.5-8 Additional terms and conditions.

The Director may impose any terms and conditions that he determines necessary to assure the achievement of the purpose of the loans made under this subsection.

§ 1882.6 Loan renegotiation.

The Secretary may, upon application of a qualified State or one of its qualified political subdivisions, take any steps he determines necessary and justified by the failure of anticipated mineral development or related revenues to materialize as expected when the loan was made under this subpart to renegotiate the loan, including restructuring of the loan. All applications submitted under this section shall set forth in detail the basis for the renegotiation of the loan. The renegotiated loan shall meet the requirements of this subpart to the extent possible.

§ 1882.7 Inspection and audit.

Upon receipt of a loan under this subpart, the grantee of the loan shall establish accounts and related records necessary to record the transactions relating to receipt and disposition of such loan. These accounts and rela
records shall be sufficiently detaile
provide an adequate inspection
audit by the Secretary and the Co
troller General of the United Sta
The loan funds shall not be comm
gled with other funds of the recipie

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

Group 2000—Land Resource Management; General

PART 2070—DESIGNATION OF AREAS AND SITES

Subpart 2070—Designation of Areas and Sites

Sec.
2070.0-1 Purpose.
2070.0-2 Objective.
2070.0-3 Authority.
2070.0-5 Definitions.

Subpart 2071—Type and Effect of Designations

2071.1 Areas or sites that may be designated.
2071.2 Standards for names.
2071.3 Standards for identification.
2071.4 Effect of designations.

Subpart 2072—Procedures

2072.1 Procedure for designating areas and sites.

AUTHORITY: Sec. 1(b)(1), 78 Stat. 986, R.S. 2478, as amended; 43 U.S.C. 1411, 1201.

SOURCE: 35 FR 9533, June 13, 1970, unless otherwise noted.

Subpart 2070—Designation of Areas and Sites

§ 2070.0-1 Purpose.

This subpart defines the circumstances and procedures under which specific areas of public and other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management may be designated and identified.

§ 2070.0-2 Objective.

The objective is to provide guidelines for the designation and identification of such areas, and to specify the nature and effect of such designations.

§ 2070.0-3 Authority.

(a) Section 1(b)(1) of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411) provides that none of the public or other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management shall be given a designation or classification unless such designation or classification is authorized by statute or defined in regulations promulgated by the Secretary of the Interior. Classifications are described in Group 2400 of this chapter.

(b) Section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), authorizes the Secretary of the Interior to enforce and carry into execution, by appropriate regulation, every part of the provisions of the public land laws not otherwise specially provided for.

§ 2070.0-5 Definitions.

(a) *Designation* refers to the official identification and naming of a general area or site on public land or other Federal land exclusively administered by the Secretary through the Bureau of Land Management.

(b) [Reserved]

Subpart 2071—Type and Effect of Designations

§ 2071.1 Areas or sites that may be designated.

(a) No lands may be designated under the regulations in this subpart unless they are either (1) classified for retention for multiple use management under the regulations and criteria in Group 2400 of this chapter, or (2) withdrawn or reserved under the regulations in Group 2300 of this chapter or other appropriate authority, or (3) given special status by act of Congress such as the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands or lands acquired under the Bankhead-Jones Act and transferred to the Bureau of Land Management for administration.

(b) The following types of areas and sites may be designated under the regulations in this subpart:

(1) *Recreation lands.* A tract of land usually several thousand acres in size where recreation is or is expected to be a major use, and designation will assist the public by making the areas known to them. Some examples of

areas which may be designated as recreation lands follow: Scenic areas of natural beauty such as waterfalls; habitat of interesting, rare or unusual plants or animals; gorges; natural lakes; geological areas of outstanding structural or historical features of the earth's development such as caves, glaciers and other phenomena; roadless areas in which the primitive environment is preserved, sometimes referred to as wilderness, wild, primitive, roadless or virgin areas. Recreation lands will contain one or more of the six classes adopted by the Bureau of Outdoor Recreation. These classes will be identified and described at the time an area is designated. These lands may be defined briefly as follows:

(i) Class I—High-density recreation areas: Areas intensively developed and managed for mass use.

(ii) Class II—General outdoor recreation areas: Areas subject to substantial development for a wide variety of specific recreation uses.

(iii) Class III—Natural environment areas: Varied and interesting land forms, lakes, streams, flora, and fauna within attractive natural settings suitable for recreation in a natural environment and usually in combination with other uses.

(iv) Class IV—Outstanding natural areas: Areas of outstanding scenic splendor, natural wonder, or scientific importance that merit special attention and care in management to insure their preservation in their natural condition. These usually are relatively undisturbed, representative of rare botanical, geological, or zoological characteristics of principal interest for scientific and research purposes.

(v) Class V—Primitive areas: Extensive natural, wild, and undeveloped areas and settings essentially removed from the effects of civilization. Essential characteristics are that the natural environment has not been disturbed by commercial utilization and that the areas are without mechanized transportation.

(vi) Class VI—Historic and cultural sites: Sites of major historical or cultural significance, either national, regional, or local. These are usually small tracts of lands containing significant evidence of American history, such as battlegrounds, mining camp cemeteries, pioneer trails, and tradin posts; or lands which contain signif cant evidence of prehistoric life suc as pictographs, petroglyphs, buria grounds, prehistoric structures, middens, fossils, paleontological remains and any other evidences of prehistori life forms.

(2) *Recreation sites.* These are relatively small tracts of land which hav value for concentrated and intensiv recreation use that usually require construction and maintenance o public facilities. Recreation sites wil contain Class I, II, III, or VI recreation lands under the Bureau of Outdoor Recreation classification system described in paragraph (b)(1) of this section.

(3) *Resource conservation areas.* These are relatively small areas of land which include a variety of resource management activities demonstrating multiple use and sustained yield conservation in action.

(4) *Natural resources experiment and research areas.* These are relatively small areas of land which are used for research or experimental purposes.

(5) *National resource lands.* These are relatively large areas of land, generally more than half of which is managed by the Bureau of Land Management under principles of multiple-use and sustained yield of the several products and services obtainable therefrom, as defined and prescribed in the Classification and Multiple-Use Act of September 19, 1964 (43 U.S.C. 1411-18 (1964)).

(c) The provisions of this part do not apply to designation of areas and trails made pursuant to part 6290 of this chapter.

[35 FR 9534, June 13, 1970, as amended at 39 FR 13613, Apr. 15, 1974]

§ 2071.2 Standards for names.

(a) To the fullest extent possible, standards established by the Board on Geographic Names will be followed in naming special management areas.

(b) First preference will generally be given to a geographic feature within the site or area if the feature significantly affects the utilization of the natural resources of the area.

(c) No site or area will be named after a living person. An area may be named after a deceased person if that person made a personal contribution to the utilization or management of the natural resources in the area.

(d) For public identification purposes names of sites and areas designated in accordance with the regulations in this subpart shall be brief and descriptive.

§ 2071.3 Standards for identification.

Lands designated in accordance with the regulations in this subpart may be—

(a) Posted by means of entrance and boundary signs sufficient to make the lands and the reason for posting known on the ground.

(b) Identified on maps or diagrams sufficient to make the existence and locations known to the general public.

§ 2071.4 Effect of designations.

(a) Designation under this section will have no effect upon established use or management of the areas or sites involved.

(b) If changes in the status of the land or use arrangements are desired, such changes must be accomplished by—

(1) Segregation under the Classification and Multiple Use Act regulations in Group 2400 of this chapter;

(2) Withdrawal or reservation under regulations in Group 2300 of this chapter or other appropriate authority;

(3) Modification of existing use arrangements, to the extent authorized by existing authority and regulations, such as Subchapter D—Range Management (4000) of this chapter for livestock grazing.

Subpart 2072—Procedures

§ 2072.1 Procedure for designating areas and sites.

The sites and areas defined under § 2071.1 may be designated, named, and posted by the authorized officer, after consultation and coordination with the authorized users and any other parties, organizations, and units of government which may have an interest in such action.

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Sec.
2091.0-1 Purpose.
2091.0-3 Authority.
2091.0-5 Definitions.
2091.0-7 Principles.
2091.1 Action on applications and mining claims.
2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.
2091.2-1 Segregation.
2091.2-2 Opening.
2091.3 Segregation and opening resulting from the filing of an application or offer.
2091.3-1 Segregation.
2091.3-2 Opening.
2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.
2091.4-1 Segregation and opening: Desert-land entries and Indian allotments.
2091.4-2 Segregation and opening: Airport leases and grants.
2091.4-3 Segregation and opening: Carey Act.
2091.5 Withdrawals.
2091.5-1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.
2091.5-2 Segregation of lands resulting from withdrawal applications filed prior to October 21, 1976.
2091.5-3 Segregative effect and opening: Emergency withdrawals.
2091.5-4 Segregative effect and opening: Water power withdrawals.
2091.5-5 Segregative effect and opening: Federal Power Act withdrawals.
2091.5-6 Congressional withdrawals and opening of lands.
2091.6 Opening of withdrawn lands: General.
2091.7 Segregation and opening of lands classified for a specific use.
2091.7-1 Segregative effect and opening: Classifications.
2091.7-2 Segregative effect and opening: Taylor Grazing Act.
2091.9 Segregation and opening resulting from laws specific to Alaska.
2091.9-1 Alaska Native selections.
2091.9-2 Selections by the State of Alaska.
2091.9-3 Lands in Alaska under grazing lease.

Sec.

Subpart 2093—Minerals (Nonmineral Entries on Mineral Lands)

2093.0-3 Authority.
2093.0-5 Definitions.
2093.0-6 Notations required.
2093.0-7 Compensation for damages.
2093.1 Surface rights of nonmineral entrymen.
2093.1-1 Act of March 3, 1909.
2093.1-2 Election to take patent with reservation to United States of the coal deposits.
2093.1-3 Procedures.
2093.2 Agricultural entries on coal lands.
2093.2-1 Acts of June 22, 1910, and April 30, 1912.
2093.2-2 Land on which entries may be made.
2093.2-3 Procedures.
2093.2-4 Patent with reservation of coal deposits; disposal of coal deposits.
2093.3 Agriculture entry of lands withdrawn, classified or valuable for minerals.
2093.3-1 Acts of July 17, 1914, and March 4, 1933.
2093.3-2 Lands to which applicable.
2093.3-3 Procedures.
2093.3-4 Patents.
2093.3-5 Disposition of reserved deposits; protection of surface claimant.
2093.4 Entries on coal, oil, and gas lands in Alaska.
2093.4-1 Acts of March 8, 1922, and May 17, 1906, as amended.
2093.4-2 Rights of prior mineral permittees or lessees.
2093.4-3 Obligations of subsequent mineral permittees or lessees.
2093.5 Disposition of minerals reserved to the U.S. Government.
2093.5-1 Act of December 29, 1916.

Subpart 2094—Special Resource Values; Shore Space

2094.0-3 Authority.
2094.0-5 Definitions.
2094.1 Methods of measuring; restrictions.
2094.2 Waiver of 160-rod limitation.

AUTHORITY: R.S. 2478 (43 U.S.C. 1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 *et seq.*; 43 U.S.C. 641 *et seq.*; 43 U.S.C. 321-323; 43 U.S.C. 231, 321, 323, 327-329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339-340; 43 U.S.C. 852 note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 *et seq.*; 16 U.S.C. 3101 *et seq.*; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 189; 48 U.S.C. 462 note, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands

SOURCE: 52 FR 12175, Apr. 15, 1987, unle otherwise noted.

§ 2091.0-1 Purpose.

The purpose of this subpart is t provide a general restatement of th regulatory provisions in title 43 of th Code of Federal Regulations dealin with the segregation and opening o public lands administered by the Secretary of the Interior through the Bureau of Land Management and summarize the existing procedures covering opening and closing of lands as they relate to the filing of applications. The provisions of this subpart do not replace or supersede any provisions of title 43 covering opening and closing of public lands.

§ 2091.0-3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 *et seq.*), the Act of March 3, 1877 (43 U.S.C. 321-323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327-329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339-340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

§ 2091.0-5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of some or all of the public land laws, including the mineral laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) *Land* or *public lands* means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) *Mineral laws* means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) *Public lands records* means the Tract Books, Master Title Plats and Historical Indices maintained by the Bureau of Land Management, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, reservations, openings, classifications applications, segregations, leases, permits and disposals.

(f) *Opening* means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if appropriate, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals, reservations, classifications, and management decisions. Depending on the language in the opening order, an opening may restore the lands to the operation of all or some of the public land laws.

(g) *Opening order* means an order issued by the Secretary or the authorized officer and published in the FEDERAL REGISTER that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) *Public land laws* means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) *Revocation* means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) *Secretary* means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the *Secretary*.

§ 2091.07 Principles.

(a) Generally, segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to the operation of the discretionary mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is, in most cases, for a limited period which is specified in regulations or in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where the law and regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, except those that apply to selections made by the State of Alaska under section 906(e) of the Alaska National Interest Land Conservation Act and selections made by Alaska Native Corporations under section 3(e) of the Alaska Native Claims Settlement Act, when approval of the application is prevented by:

(1) A withdrawal, reservation, classification, or management decision applicable to the lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classifications existing under appropriate law;

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action previously published in the Federal Register under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution these matters in local courts.

§ 2091.2 Segregation and opening resu ing from publication of a Notice Realty Action.

§ 2091.2-1 Segregation.

The publication of a Notice Realty Action in the Federal Regist segregates lands that are available f disposal under:

(a) The Recreation and Public Pu poses Act, as amended (43 U.S.C. 869 4), for a period of 18 months (See par 2740 and subpart 2912);

(b) The sales provisions of sectio 203 of the Federal Land Policy an Management Act of 1976 (43 U.S.C 1713) for a period of 270 days (Se part 2710); and

(c) The exchange provisions of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for a period of 2 years (See part 2200).

§ 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action automatically terminates either:

(1) At the end of the periods set out in § 2091.2-1 of this title (See part 2740); or

(2) As of the date specified in an opening order published in the Federal Register; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Lands conveyed under either the Recreation and Public Purposes Act or sections 203 and 206 of the Federal Land Policy and Management Act, upon opening, remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(c) Lands conveyed to the United States by exchange become public lands upon acceptance of title by the United States and become open to the operation of some or all of the public land laws, to the extent and on the date and time set forth in an opening order published in the Federal Register.

§ 2091.3 Segregation and opening resulting from the filing of an application or offer.

§ 2091.3–1 Segregation.

(a) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See subparts 2621 and 2622)

(b) The filing of a notice of an offer for exchange of lands within the National Forest System segregates the lands for a period of 2 years from the date of such filing with the authorized office. (See § 2202.1(b))

(c) The filing of an application and publication of the notice of the filing of an application in the Federal Register for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the publication of the notice of filing of the application with the authorized officer. (See part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211–213), or the filing of a request for an airport conveyance under the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215), segregates the lands as of the date of filing with the authorized officer. (See part 2640 and subpart 2911)

[52 FR 12175, Apr. 15, 1987; 52 FR 13563, Apr. 23, 1987]

§ 2091.3–2 Opening.

(a) If the application or offer described in § 2091.3-1 of this title is not denied or otherwise terminated prior to the end of the 2-year segregative period, the segregative effect of the filing of the application or offer terminates either:

(1) Upon the issuance of a patent, other document of conveyance or lease to such lands; or

(2) Upon publication in the Federal Register of an opening order terminating the segregative effect and specifying the date and time of opening; or

(3) Automatically upon the expiration of the 2-year period commencing on the date the application or offer is filed; whichever occurs first.

(b) If the application or offer described in § 2091.3-1 of this title is denied or otherwise terminated prior to the end of the 2-year segregation period, the lands are opened by publication in the Federal Register of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States within the National Forest System under the authority of the Act of March 20, 1922, as amended (16 U.S.C. 485), or the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) are open to operation of all laws and regulations applicable to National Forest System lands on the date the lands are transferred to the National Forest System; and the public lands, as applicable, on the date of publication of a notice of availability.

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4–1 Segregation and opening: Desert-land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See parts 2520 and 2530).

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the Federal Register of an opening order which specifies the date and time of opening. (See parts 2520 and 2530).

§ 2091.4–2 Segregation and opening: Airport leases and grants.

(a) The issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands. (See part 2640 and subpart 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, but are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See part 2640 and subpart 2911).

§ 2091.4-3 Segregation and opening: Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the FEDERAL REGISTER that a contract has been signed segregates the lands described in the contract, as of the date of publication of a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See part 2610).

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the FEDERAL REGISTER of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5-1 Segregation of lands resulting from withdrawal applications filed on or after October 21, 1976.

(a) Publication in the FEDERAL REGISTER of a notice of an application or proposal for withdrawal, as provided in subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Segregations resulting from applications and proposals filed on or after October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication in the FEDERAL REGISTER of the notice of the filing of an app cation or proposal for withdrawal;

(2) Upon the publication in the F ERAL REGISTER of a Public Land Ord effecting the withdrawal in whole in part;

(3) Upon the publication in the F ERAL REGISTER of a notice denying t withdrawal application or proposal, whole or in part, giving the date a time the lands shall be open; or

(4) Publication in the FEDERAL REGI TER of a notice of request for cancell tion of a withdrawal application o proposal, in whole or in part, givin the date and time the lands are open

§ 2091.5-2 Segregation of lands resultin from withdrawal applications file prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application or withdrawal proposal filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the FEDERAL REGISTER, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5-1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5-1 of this title.

(b) Segregations resulting from applications filed under this section terminate in accordance with procedures in § 2091.5-1 of this title.

§ 2091.5-3 Segregative effect and opening: Emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, and cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration of the withdrawal unless segregation is effected by the publication in the FEDERAL REGISTER of a notice of a withdrawal application or proposal.

§ 2091.5-4 Segregative effect and opening: Water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public land laws, but are not withdrawn and segregated from the operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws after a revocation or cancellation order issued by the Department of the Interior or after a determination to open the lands is made by the Federal Energy Regulatory Commission under section 24 of the Federal Power Act. (See subpart 2320) Mining claims may be located on such lands under procedures in subpart 3730 of this title. These lands are opened by publication in the FEDERAL REGISTER of an opening order specifying the extent, date and time of opening.

§ 2091.5-5 Segregative effect and opening: Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate.

(2) The issuance of a permit or license for a project by the Federal Energy Regulatory Commission withdraws the lands from the operation of the mining laws. (See part 3730).

(b) Lands withdrawn under section 24 of the Federal Power Act remain withdrawn until the withdrawal is vacated and the lands opened by proper authority.

(c) After a withdrawal has been vacated, the lands are opened to the operation of the public land laws by notation of the lands records to that effect.

§ 2091.5-6 Congressional withdrawals and opening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date, duration and extent of segregation, the Secretary shall publish in the FEDERAL REGISTER a Public Land Order so specifying.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the FEDERAL REGISTER an opening order so specifying.

§ 2091.6 Opening of withdrawn lands: General.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the FEDERAL REGISTER of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the FEDERAL REGISTER of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the FEDERAL REGISTER as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened. (See subpart 2310.)

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7-1 Segregative effect and opening: Classifications.

(a)(1) Lands classified under the authority of the Recreation and the Public Purposes Act, as amended (43 U.S.C. 869-4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act, except as provided in the notice of realty action.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411-18) are

segregated to the extent described in the notice of classification.

(b) The segregative effect of the classification described in § 2091.7-1 of this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications; (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2740 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2740 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date on these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classification shall be terminated by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening.

[52 FR 12175, Apr. 15, 1987; 52 FR 36575, Sept. 30, 1987]

§ 2091.7-2 Segregative effect and opening: Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice. The segregative effect for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the FEDERAL REGISTER of an opening order specifying the date and time of opening or upon issuance of a patent or oth document of conveyance,

§ 2091.9 Segregation and opening resul ing from laws specific to Alaska.

§ 2091.9-1 Alaska Native selections.

The segregation and opening o lands authorized for selection and selected by Alaska Natives under th Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), are covered by part 2650 of this title.

§ 2091.9-2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by subpart 2627 of this title.

§ 2091.9-3 Lands in Alaska under grazin lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a-316o) are covered by part 4200 of this title.

Subpart 2093—Minerals (Nonmineral Entries on Mineral Lands)

AUTHORITY: R.S. 2478; sec. 32, 41 Stat. 450; 43 U.S.C. 1201, 30 U.S.C. 189.

SOURCE: 35 FR 9536, June 13, 1970, unless otherwise noted.

§ 2093.0-3 Authority.

(a) Section 29 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449; 30 U.S.C. 186) and the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124) grant the Secretary of the Interior complete discretion to determine whether the surface of public lands embraced in mineral permits or leases, or in applications for such permits or leases, or classified, withdrawn, or reported as valuable for any leasable mineral, or lying within the geologic structure of a field, should be disposed of. Accordingly, where a nonmineral application is filed, in the continental United States, for any of such described lands, the nonmineral application may be allowed only if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. Appeals from any decision of the Director, Bureau of Land Management, or other officer, may be taken by any affected party in accordance with parts 1840 and 1850 of this chapter.

§ 2093.0-5 Definitions.

As used in §§ 2093.0-3 to 2093.0-7 inclusive, a mineral claim is *prior* where an application for a mineral permit or lease has been filed before either the filing of a complete nonmineral application for part or all of the same land, or before the classification of that land for the purposes requested by that nonmineral applicant: *Provided*, That the nonmineral application is not either for:

(a) A State exchange under section 8 of the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315g), as amended, filed prior to such mineral claim; or

(b) A reclamation homestead under the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 372 *et seq.*) for lands applied for by a mineral claimant under the Leasing Act after withdrawal for reclamation purposes.

§ 2093.0-6 Notations required.

(a) *On notice of allowance.* Whenever the mineral claim is *prior*, the following notation will be made in the notice of allowance of the nonmineral application, as well as on the original copy of that nonmineral application:

> This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the nonmineral entryman or patentee for crop and improvement damages resulting from such mineral activity.

(b) *On final certificate.* (1) Whenever a nonmineral application, which is affected by the notation described in paragraph (a) of this section, proceeds to issuance of patent, and at the time of such issuance there is outstanding a mineral lease, permit, or application therefor, based on a *prior*, mineral claim, such final certificate and patent will indicate that they are subject to the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124).

(2) Such final certificate and patent will indicate that they are also subject to the provisions and limitations of section 29, Act of February 25, 1920 (41 Stat. 449; 30 U.S.C. 186), if, when the final certificate or patent issues, there is outstanding a mineral lease or permit based on a *prior* mineral claim.

§ 2093.0-7 Compensation for damages.

In any case where there is no *prior* mineral claim, any person obtaining authority to prospect for, mine or remove the reserved mineral deposits will be liable to the entryman, selector or patentee of the surface for any damages to crops or improvements which may result from his prospecting or mining operations on the land.

§ 2093.1 Surface rights of nonmineral entrymen.

§ 2093.1-1 Act of March 3, 1909.

(a) The Act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) protects persons who in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed, or reported as being valuable for coal by providing a means whereby such persons may at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein.

(b) [Reserved]

§ 2093.1-2 Election to take patent with reservation to United States of the coal deposits.

All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed, or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the

United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as provided for in § 2093.1-3 (a) and (b).

§ 2093.1-3 Procedures.

(a) *Where final proof has not been submitted.* (1) Authorized officers will promptly advise each nonmineral claimant to land which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the Act of March 3, 1909.

(2) In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

(3) In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation, unless it shall be shown that the land is chiefly valuable for coal.

(4) The claimant may, after determination at final proof that the lands are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

(b) *When final proof has been submitted.* Where satisfactory final proof has been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, the ent shall be canceled, unless the claiman shall prove that he was at the time the initiation of his claim in goo faith endeavoring to secure the lan under the nonmineral laws, and no because of its coal character, in whic event he shall be permitted to elect t receive patent with the reservation prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

§ 2093.2 Agricultural entries on coal lands.

§ 2093.2-1 Acts of June 22, 1910, and April 30, 1912.

(a) Section 1 of the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83), provides that the unreserved public lands of the United States exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws, the desert land law, and to withdrawal under the Act approved June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 *et seq.*), known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the Act approved February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), entitled "An act to provide for an enlarged homestead." The Act of February 19, 1909, was amended by the Act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(b) Section 2 of the Act (36 Stat. 584; 30 U.S.C. 84) provides that any person desiring to make entry under the homestead laws or the desert-land law, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this act.

(c) The Act of April 30, 1912 (37 Stat. 105; 30 U.S.C. 90) authorizes the selection of unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, by the several states within whose limits the lands are situated, under grants made by Congress, and the offering at public sale, in the discretion of the Secretary of the Interior, of isolated or disconnected tracts of coal lands, which are so withdrawn, classified or valuable, with a reservation of the coal deposits to the United States and otherwise subject to all the conditions and limitations of the Act of June 22, 1910.

CROSS REFERENCE: See parts 2510, 2520, and 2620 for additional information on this subject.

§ 2093.2-2 Lands on which entries may be made.

(a) The Act of June 22, 1910 applies to unreserved public lands in the United States, exclusive of the State of Alaska, which have been withdrawn as coal lands and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified.

(b) The Secretary of the Interior in withdrawing, under the Reclamation Act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910.

§ 2093.2-3 Procedures.

(a) *Applications.* (1) The last proviso to section 3 of the Act of June 22, 1910 (36 Stat. 584; 30 U.S.C. 85) provides that nothing in the Act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(2) Entries and selections under the provisions of the Act of June 22, 1910, must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to the authorized officer, the following:

> Application made in accordance with and subject to the provisions and reservations of the Act of June 22, 1910 (36 Stat. 583).

(b) *Hearing.* Except in the case of those who present applications under section 2 of the Act (36 Stat. 584; 30 U.S.C. 84), the authorized officer will advise any person presenting a nonmineral application or filing for lands classified as coal lands that he will be allowed 30 days in which to submit evidence, preferably the statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. If upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the nonmineral application, in the absence of other objections, will be allowed. If reclassification be denied, the applicant may, within 30 days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the Act.

§ 2093.2-4 Patent with reservation of coal deposits; disposal of coal deposits.

There will be incorporated in patents issued to nonmineral claimants under this Act the following:

> Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by

e, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of June 22, 1910 (36 Stat. 583).

§ 2093.3 Agriculture entry of lands withdrawn, classified or valuable for minerals.

§ 2093.3-1 Acts of July 17, 1914, and March 4, 1933.

(a) Section 1 of the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121), as amended, authorizes the appropriation, location, selection, entry or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and sodium and sulphur under 30 U.S.C. 124, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made.

(b) The term *person* used in this act will be interpreted as covering a State (see ex parte, Utah, 38 L.D. 245), or other corporation, or an association when duly qualified.

(c) Under the proviso in section 2 of the Act (38 Stat. 509; 30 U.S.C. 122) applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservations; also, claimants for lands withdrawn or classified for the specified minerals subsequent to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(d) Under the Act of March 4, 193 (47 Stat. 1570; 30 U.S.C. 124), land withdrawn, classified, or reported a valuable for sodium and/or sulphu are subject to entry, filing, or selection, if otherwise available, and subject to the reservations, provision limitations and conditions of the Ac of July 17, 1914 (38 Stat. 509; 30 U.S.C 121-123), sulphur lands being limite to the States of Louisiana and Ne Mexico, pursuant to the Act of Jul 16, 1932 (47 Stat. 701; 30 U.S.C. 271-276).

(Interprets or applies sec. 1, 36 Stat. 58 sec. 1, 38 Stat. 509, as amended; 138; 3 U.S.C. 83, 121)

§ 2093.3-2 Lands to which applicable.

The Act of July 17, 1914 is general and comprehensive and operates in all the States containing public lands of the character specified. It does not apply to lands in the State of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special Acts of August 24, 1912 (37 Stat. 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat. 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general Act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general Act, July 17, 1914, will be treated as within the scope of the latter Act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general Act.

§ 2093.3-3 Procedures.

(a) *General.* The Act of July 17, 1914 in many respects resembles that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts as set forth in §§ 2093.1 to 2093.2 may be followed, so far as applicable, in matters of practice and procedure.

(b) *Notations on applications and in orders of withdrawal.* (1) All applications to locate, select, enter, or purchase lands under the Act of July 17, 1914, before being accepted and filed by the authorized officer, must have written, stamped, or printed upon their face the following:

> Application made in accordance with, and subject to the provisions and reservations of the Act of July 17, 1914 (38 Stat. 509).

(2) Orders of withdrawal under the Reclamation Act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this Act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the Act of July 17, 1914.

(c) *Notice to entryman; action by entryman.* (1) Where the Geological Survey reports that land embraced in a nonmineral entry or claim on which final proof has not been submitted or which has not been perfected is in an area in which valuable deposits of oil and gas may occur because of the absence of reliable evidence that the land is affected by geological structure unfavorable to oil and gas accumulation, the entryman or claimant will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in event reclassification is denied, or to appeal. He must be advised that, if a hearing is ordered, the burden of proof will be upon him, and also that, if he shall fail to take one of the actions indicated, his entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States.

(2) In a case where acceptable final proof has been submitted, or a claim has been perfected, and the Geological Survey thereafter makes report, as in the above or similar form, such report will not be relied upon as basis for a mineral reservation unless the Government is prepared to assume the burden of proving, prima facie, that the land was known to be of mineral character, at the date of acceptable final proof or when the claim was completed, according to the established criteria for determining mineral from nonmineral lands, among which may be those recognized by the Supreme Court in the case of United States v. Southern Pacific Company et al. (251 U.S. 1, 64 L. ed. 97). If the Government is thus prepared to assume such burden of proof, the Bureau of Land Management will notify the entryman of the mineral classification and that a hearing will be ordered if he manifests disagreement with the classification within a reasonable period. The entryman or claimant will be advised that in the event hearing is had, the burden of proof will be upon the Government; also that, if he shall fail to make answer within the time allowed, the entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil or gas to the United States.

(d) *Applications to disprove classification of land; hearing thereon.* (1) (i) The proviso to section 2 of the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the statements of experts or practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

(ii) Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the Act (38 Stat. 509; 30 U.S.C. 121), and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by the authorized officer and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the Act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

(iii) If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be allowed.

(iv) If the application be denied the applicant may, within 30 days from notice of such denial, apply to the land office for a hearing to disprove the classification. When a hearing is applied for, the authorized officer will proceed therewith under parts 1840 and 1850 of this chapter. If the applicant fails to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

(v) The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase the land in accordance with and subject to the provisions and reservations of said act.

(2) (i) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

(ii) Claimants to whom this provision is applicable may, therefore, file in the proper office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification. If the application be denied, the claimant will be allowed 30 days from notice of such denial within which to make application to the office for a hearing to establish the nonmineral character of the land. When a hearing is applied for the authorized officer will proceed therewith under parts 1840 and 1850 of this chapter.

(e) *Burden of proof.* (1) Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123) as supplemented by the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124), the burden of proof to show that said lands are not of the character of those intended to be withdrawn or that the classification as such was and is erroneous and improper in point of fact will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

(2) A withdrawal or classification will be deemed prima facie evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has preceded the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land, which subsequent thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. (See Charles W. Pelham (30 L.D. 201).)

§ 2093.3-4 Patents.

(a) *Patent with reservation.* Under section 3 of the Act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123), any person who shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular the statute is quite similar to that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), and the disposition of such cases will follow the practice under that act insofar as the same is applicable.

(b) *Application for patent.* Nonmineral claimants who are or may be affected by withdrawals or classifications made or which shall be made, subsequent to their locations, selections, entries, or purchases, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral, shall be entitled to the patent authorized to be issued by section 3 of the Act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123) upon the filing of an application therefor. Such claimant will be notified of his right to such a patent, and upon failure to file within 30 days his application therefor or to apply for a classification of the land as nonmineral, the entry will be canceled.

(c) *Reservations in patents.* There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914 (38 Stat. 509).

§ 2093.3-5 Disposition of reserved deposits; protection of surface claimant.

The Act of July 17, 1914, provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Provisions are made in the Act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits.

§ 2093.4 Entries on coal, oil, and gas lands in Alaska.

§ 2093.4-1 Acts of March 8, 1922, and May 17, 1906, as amended.

(a) The Act of March 8, 1922 (42 Stat. 415), as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 376, 377), referred to in §§ 2094.4-1 to 2093.4-3 as "the Act of 1922," provides that:

(1) In Alaska, homestead, including soldiers' additional homestead, homesite, headquarters site, and trade and manufacturing site claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits or that may be valuable for the coal, oil, or gas contained therein, and which are not otherwise reserved or withdrawn;

(2) Such claims initiated in good faith may be perfected under the appropriate public land laws and, upon satisfactory proof of full compliance with these laws, the claimant shall be entitled to patent to the lands entered by him, which patent shall contain a reservation to the United States of all the coal, oil, or gas in the land patented, together with the right to prospect for, mine, and remove the same; and

(3) Should it be discovered at any time prior to the issuance of a final certificate on any claim initiated for unreserved lands in Alaska that the lands are coal, oil, or gas in character, the patent issued on such entry shall contain the reservation referred to in paragraph (a)(2) of this section.

(b) The Act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357), permits, subject to the provisions of the Act of 1922, homestead allotments to Indians, Leuts, and Eskimos of vacant, unappropriated, and unreserved lands in Alaska that may be valuable for coal, oil, or gas deposits and the Act of August 17, 1961 (75 Stat. 384), permits the Secretary of the Interior to sell under the provisions of section 2455 of the Revised Statutes (43 U.S.C. 1171), as amended, lands in Alaska known to contain workable coal, oil, or gas deposits, or that may be valuable for the coal, oil, or gas contained therein, and which are otherwise subject to sale under said section 2455, as amended, upon the condition that the patent issued to the purchaser thereof shall contain the reservation required by section 2 of the Act of 1922. (See part 2710.)

(c) Section 2 of the Act of 1922 provides:

(1) The coal, oil, and gas deposits reserved under the act shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits, or coal, oil, or gas lands in Alaska, in force at the time of such disposal;

(2) Any person qualified to acquire coal, oil, or gas deposits, or the right to mine and remove the coal, or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times (after the issuance of, and pursuant to, a lease or permit therefor) to enter upon the lands as provided by the act for the purpose of prospecting for coal, oil, or gas upon the approval, by the Secretary of the Interior, of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting;

(3) Any person who has acquired from the United States the coal, oil or gas deposits in any such land or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove the oil or gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking, in an action instituted in any competent court to ascertain and fix the said damages.

(d) The Act of 1922 extends to Alaska the principles of the Acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), and July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), which, among other things, govern agricultural entries on coal, oil, or gas lands in States other than Alaska. The general instructions under these acts relating to the reservation of coal, oil, or gas to the United States as set forth in this subpart will, therefore, be followed in matters of practice and procedure.

§ 2093.4-2 Rights of prior mineral permittees or lessees.

If prior to the date of the initiation of a claim that is subject to the provisions of the Act of 1922, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application for or offer of such a lease or permit, the land will be subject to the right of such prior mineral permittee or lessee, or of such prior applicant for or offeror of a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the entryman, allottee, or patentee for crop and improvement damages resulting from such mineral activity.

§ 2093.4-3 Obligations of subsequent mineral permittees or lessees.

(a) Any coal permit applicant or noncompetitive oil and gas lease offeror whose application or offer was filed subsequent to the date of the initiation of a claim that is subject to the provisions of the Act of 1922 must file with the authorized officer of the proper office a waiver from, or a consent of, the claimant or a bond or undertaking on forms approved by the Director, for coal applicants and for oil and gas offerors for the payment of all damages to the crops and improvements on the lands caused by the prospecting.

(b) [Reserved]

§ 2093.5 Disposition of minerals reserved to the U.S. Government.

§ 2093.5-1 Act of December 29, 1916.

(a) *Reservation of rights.* (1) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(2) There will be incorporated in patents issued on homestead entries under this act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the Act of December 29, 1916 (39 Stat. 862).

Subpart 2094—Special Resource Values; Shore Space

Authority: R.S. 2478, secs. 4, 5, 69 Stat. 444; 43 U.S.C. 1201, 48 U.S.C. 462 note.

Source: 35 FR 9540, June 13, 1970, unless otherwise noted.

§ 2094.0-3 Authority.

Section 1 of the Act of May 14, 1898 (30 Stat. 409) as amended by the Acts of March 3, 1903 (32 Stat. 1028) and August 3, 1955 (69 Stat. 444; 48 U.S.C. 371) provides that no entry shall be allowed extending more than 160 rods along the shore of any navigable water. Section 10 of the Act of May 14, 1898, as amended by the Acts of March 3, 1927 (44 Stat. 1364), May 26, 1934 (48 Stat. 809), and August 3, 1955 (69 Stat. 444), provides that trade and manufacturing sites, rights-of-way for terminals and junction points, and homesites and headquarters sites may not extend more than 80 rods along the shores of any navigable water.

§ 2094.0-5 Definitions.

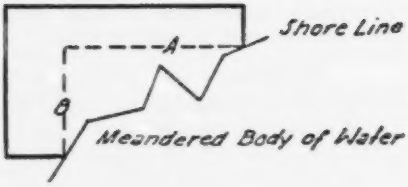
The term *navigable waters* is defined in section 2 of the Act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411), *to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark.*

§ 2094.1 Methods of measuring; restrictions.

(a) In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, as abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the longest straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the application abutting on the water, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

(b) The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

(c) The following sketch shows the method of measuring the length of shore space, the length of line *A* or line *B*, whichever is the longer, representing the length of shore space which is chargeable to the tract:



§ 2094.2 Waiver of 160-rod limitation.

(a) The Act of June 5, 1920 (41 Stat. 1059; 48 U.S.C. 372) provides that the Secretary of the Interior in his discretion, may upon application to enter or otherwise, waive the restriction that no entry shall be allowed extending more than 160 rods along the shore of any navigable waters as to such lands as he shall determine are not necessary for harborage, landing, and wharf purposes. The act does not authorize the waiver of the 80-rod restriction, mentioned in § 2094.0-3.

(b) Except as to trade and manufacturing sites, and home and headquarters sites, any applications to enter and notices of settlement which cover lands extending more than 160 rods along the shore of any navigable water will be considered as a petition for waiver of the 160-rod limitation mentioned in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the limitation.

Group 2100—Acquisitions

PART 2110—GIFTS

Subpart 2110—Gifts; General

Sec.
2110.0-1 Purpose.
2110.0-3 Authority.

Subpart 2111—Procedures

2111.1 Offer to convey.
2111.1-1 Place of offering.
2111.1-2 Designation of authority and description of property.
2111.1-3 Statement of ownership encumbrances.
Sec.
2111.2 Acceptance of offer.
2111.3 Deed of conveyance.
2111.4 Status of lands.

AUTHORITY: Sec. 2, 48 Stat. 1270, R.S. 2478, as amended, sec. 8, 48 Stat. 1272, as amended; 43 U.S.C. 315a, 1201, 315g.

Subpart 2110—Gifts; General

§ 2110.0-1 Purpose.

The Secretary of the Interior may accept as a gift, lands, with or without improvements thereon, with or without limitations or conditions as to the future use and disposition thereof, in fee simple or any interest less than fee, where possession of such land or interest will promote the purposes of a grazing district or facilitate the administration or contribute to the improvement, management, use or protection of public lands and their resources. The authority of the Secretary is discretionary and acceptance of offers rests, among other things, upon a determination that the public interest will be served thereby.

[35 FR 9545, June 13, 1970]

§ 2110.0-3 Authority.

(a) *Section 8(a) of the Taylor Grazing Act.* Section 8(a) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, authorizes the Secretary of the Interior to accept on behalf of the United States, any lands within or without the exterior boundaries of a grazing district as a gift, where such action will promote the purposes of a district or facilitate the administration of the public lands.

(b) *Section 103(a) of the Public Land Administration Act.* Section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364), authorizes the Secretary to accept contributions or donations of real or mixed property, including rights-of-way, for the improvement, management, use and protection of the public lands and their resources administered by the Bureau of Land Management.

(c) Section 5 of the King Range Conservation Area Act (16 U.S.C. 460y) authorizes the Secretary to accept land or interest in and within the area by donation.

(d) Section 6(f) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(f)) authorizes the Secretary to accept donations of lands and interests in land, funds and other property for use in connection with his administration of the national wild and scenic rivers system.

[35 FR 9545, June 13, 1970, as amended at 41 FR 15851, Apr. 15, 1976; 41 FR 29122, July 15, 1976]

Subpart 2111—Procedures

Source: 35 FR 9545, June 13, 1970, unless otherwise noted.

§ 2111.1 Offer to convey.

§ 2111.1-1 Place of offering.

Any person desiring to make a gift, contribution, or donation of land or interest in land to the United States should submit an offer to convey and transfer said property to the United States voluntarily. The offer should be transmitted to the proper land office in accordance with the provisions of § 1821.2 of this chapter.

§ 2111.1-2 Designation of authority and description of property.

The offer should designate the statute under which the gift is to be made and should describe the lands by legal subdivisions of the public land surveys, if possible, with a description of any permanent improvements fixed to the land. Any limitations on title should be fully detailed and any conditions as to future use and disposition of the land should be set forth.

§ 2111.1-3 Statement of ownership encumbrances.

The offer should be accompanied by a statement showing that the offeror is the record owner in fee of lands so offered, free and clear of all encumbrances; that there are no persons claiming the land adversely to the offeror; whether there are any unpaid taxes or assessments levied or assessed against the offered land or that could operate as a lien thereon; whether there is a tax or assessment due on such lands or that could operate as a lien thereon, but which tax or assessment is not yet payable; and that there are no unredeemed tax deeds outstanding against the lands.

§ 2111.2 Acceptance of offer.

Where the authorized officer finds that acceptance of the offered lands is in consonance with the program set forth in § 2110.0-1, he shall advise the offeror of the acceptance of the offer and request the offeror to submit a voluntary deed of conveyance to the United States of the land offered, together with an affidavit that the offeror has not conveyed or encumbered the land in any manner from the time of making the offer up to and including the date of recordation of the deed.

§ 2111.3 Deed of conveyance.

The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State in which the lands are situated. The deed should recite that it is made *as a gift*, as authorized by statute appropriately designated. Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the spouse of the donor must join in the execution and acknowledgment of the deed in such manner as to bar effectually any right of courtesy or dower, or any claim whatsoever to land conveyed, or it must be fully and satisfactorily shown that under the laws of the State in which the land conveyed is situated, such spouse has no interest, present or prospective, which makes his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, the order or direction of the board of directors or other governing body should be recited in the deed, and a copy thereof must accompany the instrument of transfer. Both the deed and the instrument must bear the impression of the corporate seal.

§ 2111.4 Status of lands.

Upon acceptance of the deed of conveyance, the lands or interests so conveyed will become property of the

United States but will not become subject to applicable land and mineral laws of this title unless and until an order to that effect is issued by the authorized officer.

PART 2120—LEASES

Subpart 2120—Leases; General

Sec.
2120.0-2 Objectives.
2120.0-3 Authority.

Subpart 2121—Procedures

2121.1 Evidence of ownership.
2121.1-1 Certificate of ownership for State or county lands.
2121.1-2 Certificate of ownership for private lands.
2121.2 Leases.
2121.2-1 Form of lease.
2121.2-2 Period of lease.
2121.2-3 Approval of lease; renewal.
2121.3 Payment of rental.
2121.4 Fees.
2121.4-1 Computation of fees.
2121.4-2 Disposition of receipts.
2121.4-3 Allocation of funds appropriated.
2121.5 Improvements by the United States on leased lands.

AUTHORITY: 48 Stat. 1270; 43 U.S.C. 315a.

SOURCE: 35 FR 9546, June 13, 1970, unless otherwise noted.

Subpart 2120—Leases; General

§ 2120.0-2 Objectives.

When it is determined by the authorized officer that any State, county, or privately owned lands located within grazing districts are chiefly valuable for grazing, and are necessary to promote the orderly use, improvement, and development of grazing districts, steps should be taken to secure offers of leases of such lands from the owners thereof.

§ 2120.0-3 Authority.

(a) *The Act of June 23, 1938.* The Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m-1, 315m-4 inclusive), known as the Pierce Act, authorizes the Secretary of the Interior in his discretion to lease, at rates to be determined by him, any State, county, or privately owned lands chiefly valuable for grazing purposes and lying within the exterior boundaries of grazing districts created under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 *et seq.*) when in his judgment, the leasing of such lands will promote the orderly use of the district and aid in conserving the forage resources of the public lands therein, and the authorized officer of the Bureau of Land Management may approve leases under the Pierce Act on behalf of the United States in accordance with this part. Leases so approved need not be submitted for Secretarial approval.

Subpart 2121—Procedures

§ 2121.1 Evidence of ownership.

Parties offering to lease lands to the United States under the provisions of this Act will be required to furnish evidence of ownership as follows:

§ 2121.1-1 Certificate of ownership for State or county lands.

Where State and county lands are offered for lease, a certificate from the proper State or county official will be required showing that title to the lands is in the State or county and that the officer or agency of the State or county offering them for lease is empowered by the laws of such State to lease such lands.

§ 2121.1-2 Certificate of ownership for private lands.

Where privately owned lands are offered for lease, the party offering them will be required to file with the local office of the Bureau of Land Management certificates from either the proper county officials, a licensed abstracter, or an administrative officer of the Bureau of Land Management whichever is required by an authorized officer, certifying that the records of the county in which the lands are situated show that the party offering the lands for lease is the record owner thereof or in legal control of such lands under appropriate recorded lease permitting the subleasing of the property, and including an itemized statement showing the nature and extent of any liens, tax assessments, mortgages, or other encumbrances.

§ 2121.2 Leases.

§ 2121.2-1 Form of lease.

Leases under the Pierce Act should conform in general to a form approved by the Director. This form is believed adaptable for use in all of the States within which grazing districts have been established under the Taylor Grazing Act. Leases under the Pierce Act must be executed by the lessor in the manner prescribed by the laws of the State within which the lands leased are situated.

§ 2121.2-2 Period of lease.

Leases may be made for such periods as are deemed proper by an authorized officer in promoting a proper land-use program in connection with the public range, not to exceed, however, the 10-year period as limited by the Pierce Act, beginning with the date of the approval of such lease.

§ 2121.2-3 Approval of lease; renewal.

Local negotiations for leasing of lands under this act will not be effective until the lease and any renewal thereof has been approved by an authorized officer of the Bureau of Land Management. Upon such approval the lease should be recorded in the land records of the county in which the land is situated.

§ 2121.3 Payment of rental.

The carrying capacity of the lands will be taken into consideration in negotiating the rental to be paid. Payment of rentals will be made annually by the United States at the end of the period for which licenses or permits to graze on the lands involved have been granted, or as soon thereafter as the moneys collected by the United States from its licensees or permittees for the use of such lands have been appropriated by the Congress in accordance with the provisions of the Pierce Act, and made available for such purpose, or moneys for the payment of such rentals have been made available through contributions under section 9 of the Taylor Grazing Act (48 Stat. 1273; 43 U.S.C. 315h).

§ 2121.4 Fees.

§ 2121.4-1 Computation of fees.

The aggregate of the grazing fees collected for the use of the lands leased under the provisions of the Pierce Act must be sufficient to insure a return to the United States of an amount equal to the aggregate of the rentals paid for such lands and the aggregate of the grazing fees collected for the use of all the lands leased in any one State must be at least equal to the aggregate of the rentals paid in that State.

§ 2121.4-2 Disposition of receipts.

All moneys received in the administration of lands leased under the Pierce Act will be deposited in the Treasury of the United States as provided in section 4 of that Act and will be available when appropriated by the Congress for the leasing of lands. Distribution of such receipts, therefore, will not be made as provided in sections 10 and 11 of the Taylor Grazing Act (48 Stat. 1273; 43 U.S.C. 315i, 315j).

§ 2121.4-3 Allocation of funds appropriated.

Moneys received in the administration of lands leased under the Pierce Act, when appropriated by the Congress, will be allocated to the budgets of the State Director for disbursement in accordance with that Act and the regulations in this part. Records of disbursements thereof will be maintained under existing procedure.

§ 2121.5 Improvements by the United States on leased lands.

The procedure in placing improvements on any lands leased under the Pierce Act, will, so far as practicable, be the same as provided under part 4110 of this chapter.

PART 2130—ACQUISITION OF LANDS OR INTERESTS IN LANDS BY PURCHASE OR CONDEMNATION

Subpart 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation: General

Sec.
2130.0-3 Authority.
2130.1—2130.3 [Reserved]
2130.4 Acquisition of lands in King Range Conservation Area
2130.4-1 Purchase.

Subpart 2137—Condemnation of Lands or Interests in Lands

2137.0-7 Appraisals.
2137.0-8 [Reserved]
2137.0-9 Reasons for condemnation.

SOURCE: 41 FR 15851, Apr. 15, 1976, unless otherwise noted.

Subpart 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation: General

§ 2130.0-3 Authority.

The Act of October 21, 1970, (16 U.S.C. 460y) provides for the establishment of the King Range National Conservation Area and authorizes the Secretary of the Interior to acquire by purchase any land or interest in land within the area pursuant to the Act.

§§ 2130.1—2130.3 [Reserved]

§ 2130.4 Acquisition of lands in King Range Conservation Area.

§ 2130.4-1 Purchase.

If the Secretary of the Interior determines that the acquisition of land or interest in land is desirable for consolidation of public lands within the Area he may acquire land or interest in land within the King Range National Conservation Area by purchase with donated funds appropriated specifically for that purpose.

Subpart 2137—Condemnation of Lands or Interests in Lands

§ 2137.0-7 Appraisals.

Prior to initiation of condemnation proceedings, the property will be appraised pursuant to approved Bureau procedures to determine its fair market value and an offer made to purchase it at that appraised price.

§ 2137.0-8 [Reserved]

§ 2137.0-9 Reasons for condemnation.

Incompatible use. The power of eminent domain will be exercised only if the Secretary finds that the use to which the land is being put is incompatible with the purposes of the King Range National Conservation Area Act or the management plan prepared in accordance with the Act, and if efforts to acquire the land by other means have failed.

Group 2200—Exchanges

PART 2200—EXCHANGES: GENERAL PROCEDURES

Subpart 2200—Exchanges: General

Sec.
2200.0-1 Purpose.
2200.0-2 Objective.
2200.0-3 Authority.
2200.0-4 Responsibilities.
2200.0-5 Definitions.
2200.0-6 Policy.
2200.0-7 Scope.
2200.1 Lands subject to disposal by exchange.
2200.2 Lands subject to acquisition by exchange.
2200.3 Lands acquired by exchange.

Subpart 2201—Exchanges: Specific Requirements

2201.1 Notice of realty action.
2201.2 Proposals.
2201.3 Valuations.
2201.4 Legal description of property.
2201.5 Final requirements.
2201.6 Exchange agreement.
2201.7 Acceptance of conveyance and removal of improvements.
2201.8 Title evidence.

Subpart 2202—Exchanges: National Forest Exchange

2202.1 Applicable regulations.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

2203.0-6 Policy.
2203.0-9 Cross references.

Sec.
2203.1 Opportunity for public comment and public meeting on exchange proposal.
2203.2 Submission of information concerning proposed exchange.
2203.3 Public meeting.
2203.4 Consultation with the Attorney General.
2203.5 Action on advice of the Attorney General.

AUTHORITY: 43 U.S.C. 1715, 1718, 1732 and 1740.

SOURCE: 46 FR 1638, Jan. 6, 1981, unless otherwise noted.

Subpart 2200—Exchanges: General

§ 2200.0-1 Purpose.

This part 2200 sets forth procedures for the exchange of public lands or interests therein for non-Federal lands and interests therein.

§ 2200.0-2 Objective.

The objective is the acquisition and disposal of lands and interests therein for the benefit of the public interest as provided in part 1601 of this title, through use of the exchange authority granted by the Federal Land Policy and Management Act of 1976. When considering public interest, full consideration will be given to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. There must also be a finding that the values and objectives which Federal ands and interests to be conveyed may serve if retained in Federal ownrship are not more than the values of he non-Federal lands and interests nd the public objectives they could erve if acquired.

2200.0-3 Authority.

These regulations are issued under he authority of sections 205, 206, 02(b) and 310 of the Federal Land olicy and Management Act of 1976 3 U.S.C. 1715, 1716, 1732 and 1740), nd apply to any proposed exchange ed after October 21, 1976.

200.0-4 Responsibilities.

The Bureau of Land Management all carry out the responsibilities of the Secretary of the Interior under these regulations.

§ 2200.0-5 Definitions.

As used in this part, the term:

(a) *Secretary* means Secretary of the Interior.

(b) *Person* means any person or entity legally capable of conveying and holding land and interests therein, under the laws of the State within which the land or interests therein are located. A person shall be a citizen of the United States, or in the case of a corporation, shall be subject to the laws of any State or of the United States.

(c) *Public lands* means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) *Lands* means any land and interests therein.

(e) *Notice of realty action* means publication of a determination as set out in § 2201.1 of this title, that certain lands are suitable for disposal by exchange under specified laws.

(f) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(g) *Exchange* means a conveyance of lands and interests therein from the United States to a person at the same time there is a conveyance of lands and interests therein from the person to the United States.

(h) *Equal value exchange* means an exchange of lands, or interests therein, where valuations show that the interests being exchanged are of equal value.

(i) *Money equalization* means balancing the differences in the equal value of the properties by a money payment made by either party.

(j) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of the Interior of regulatory authority as conferred by law to allow for the orderly administration of the public lands.

[46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983]

§ 2200.0-6 Policy.

(a) Exchange proposals shall meet policy objectives of the Federal Land Policy and Management Act and shall comply with all applicable Federal statutes, regulations and executive orders.

(b) Exchanges of interests in lands shall be considered on a case-by-case basis.

§ 2200.0-7 Scope.

(a) These regulations apply to all exchanges involving public lands and interests therein administered by the Secretary, through the Bureau of Land Management, except where an exchange is specifically authorized by subparts 2212, part 2240, part 2250, and subparts 2271, 2272, 2273 and 2274, noted in the regulations of Group 2200 of this title.

(b) Qualified requests for fee coal exchanges made under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in subpart 3437 of this title shall be processed in accordance with this part, except as otherwise provided in subpart 3437 of this title.

(c) These regulations apply to the exchange of interests, such as mineral estate interests, separate and apart from the surface estate in either Federal or non-Federal lands.

§ 2200.1 Lands subject to disposal by exchange.

(a) Public lands may be disposed of by exchange under this part only if their disposal is in conformance with the land use planning provisions contained in subpart 1601 of this title.

(b) The public lands to be exchanged shall be located in the same State as the non-Federal lands or interests to be acquired.

(c) A determination that lands have been found suitable for disposal by exchange shall be evidenced by the issuance of a notice of realty action. The notice of realty action shall contain: (1) A description of both the Federal and non-Federal lands proposed to be exchanged; (2) the identity of the party(s) with whom the exchange will occur; (3) the terms and conditions of the exchange; (4) any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest; (5) the intended time of the exchange; and (6) an opportunity for public comment.

(d) As part of the consideration of whether public interest would be served by disposal of fee coal through exchange, the applicability of unsuitability qualifications of subpart 3461 of this title to the Federal lands are relevant and will be applied.

§ 2200.2 Lands subject to acquisition by exchange.

(a) Non-Federal lands and interests therein may be acquired only when their acquisition is consistent with the mission of the Department of the Interior. Both the non-Federal and public lands and interests therein shall be located in the same State.

(b) Acquisition of lands by exchange under this part may be made only if their acquisition is in conformance with land use planning provisions under subpart 1601 of this title.

(c) Unsurveyed school sections are considered as *non-Federal* lands and may be used by the State in an exchange. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived all rights to unsurveyed sections used in the exchange.

§ 2200.3 Lands acquired by exchange.

(a) Lands and interests in lands acquired by exchange shall, upon acceptance of title by the authorized officer, become public lands. Such public lands are not available for location under the mining laws of application for sale, entry or mineral leasing. A notice of their availability shall be published in the FEDERAL REGISTER. The notice shall state the date and time of their availability and the forms of authori-

best copy available

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zation. Such availability shall be noted on the public land records.

(b) Lands and interests in lands acquired by exchange within a grazing district established under section 1 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), shall become a part of that district.

(c) Lands and interests in lands acquired within the National Forest System may be transferred to the Secretary of Agriculture by the Secretary and thereby become National Forest System lands subject to all laws and regulations applicable to other National Forest System lands.

(d) Lands and interests in lands acquired under provisions of section 206 of the Federal Land Policy and Management Act and located within the National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails or any other Federal land System established by an Act of Congress may be transferred by the Secretary to the appropriate agency for administration in accordance with the laws, rules and regulations applicable to that system.

[46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983]

Subpart 2201—Exchanges: Specific Requirements

§ 2201.1 Notice of realty action.

(a) A notice of realty action offering to exchange certain lands which have, through the public land use planning process of the Bureau of Land Management, been determined suitable for acquisition and disposal by exchange, shall be published in the FEDERAL REGISTER and shall be published once a week for 3 weeks thereafter in a newspaper of general circulation in the area of the lands to be acquired and the lands to be disposed of by a proposed exchange. The notice shall provide 45 days after the date of issuance for comments by the public and interested parties. Comments on the notice of realty action shall be sent to the office issuing the notice. The notice published under § 1601.6-3(b)(1) of this title may, if so designated in the notice, serve as the notice of realty action required by this section and may segregate the public lands covered by the exchange proposal to the same extent that they would have been under a notice of realty action issued under this section if so stated in the notice. Any such notice given under § 1601.6-3(b)(1) shall be published and distributed under the requirements of this section and provide a 45-day comment period.

(b) The publication of the notice of realty action on an exchange proposal in the FEDERAL REGISTER may segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the FEDERAL REGISTER of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. Any prior reserved Federal interests in the non-Federal lands may be segregated by the notice of realty action to the same extent the public lands are segregated.

(c) When the exchange of a tract of public lands requires the cancellation of a grazing permit or lease in its entirety notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (see 43 CFR 4110.4-2(b)). The publication of a notice of realty action shall constitute notice to the grazing permittee or lessee if notice has not been previously given. No public lands in a grazing lease or permit may be conveyed until the provisions of part 4100 of this title concerning compensation for any authorized improvements have been met.

(d) The notice of realty action shall list all reservations to be included in the conveyance to and from the United States, including, where the Federal lands are encumbered by a mineral lease or permit, a reservation to the United States for the duration of the mineral lease or permit of the mineral or minerals covered by the lease or permit.

(e) The notice of realty action shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographic area within which the public lands are located and the head of any political subdivision having administrative or public services responsibility in the geographic area within which the public lands are located not less than 60 days prior to the exchange of titles. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current land users.

[46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983]

§ 2201.2 Proposals.

(a) Exchange proposals may be submitted by a person who owns lands or interests in lands, by non-Federal entities, by Federal departments or agencies or by the Bureau of Land Management. When an exchange proposal is made to the Bureau of Land Management, it shall be made in writing to the District Manager for the district in which the Federal lands are located. The authorized officer may publish a notice of initiation or receipt of an exchange proposal within 10 days of initiation or receipt of such proposal.

(b) An exchange proposal may, if found by the authorized officer to be in accordance with Bureau of Land Management policies, programs and the regulations in this part, be the basis of publication of a notice of realty action as provided in § 2201.1 of this title.

(c) Where an exchange proposal is not accepted by the authorized officer and made the basis of a notice of realty action, the proponent shall be so advised in writing with a statement of the reason(s) for the non-acceptance and advised of the availability of a protest to the State Director.

(d) If requested in writing by the proponent within 30 days of the mailing of the notification of non-acceptance, the decision of non-acceptance of the authorized officer shall be reviewed by the State Director to determine if it is in accordance with the Bureau of Land Management policies, programs and the regulations in this part. Such review shall be completed by the State Director and the proponent notified in writing of the action taken within 60 days of receipt of the written request by the State Director.

(e) Where 2 or more exchange proposals are submitted covering the same public lands, in whole or in part, the authorized officer shall review the proposals and advise the exchange proponents as to the acceptance or nonacceptance of their proposals in the same manner as specified in paragraphs (b) through (d) of this section.

[46 FR 1638, Jan. 6, 1981, as amended at 48 FR 16888, Apr. 20, 1983]

§ 2201.3 Valuations.

(a) No exchange shall be deemed suitable if it is not an equal value exchange; however, such exchange may include a money equalization pursuant to § 2201.5(c) of this title.

(b) Appraisals to determine whether the lands and interests in lands to be exchanged are of equal value shall be in accordance with the principles in the Interagency Department of Justice publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions.

(c) The authorized officer shall use the "Methodology for an Alternative Method of Determining the Value of Lands for Exchange Containing Oil Shale and Associated Minerals," a guidance document for determining equal value in lieu of an appraisal to determine equal value only for lands containing oil shale and any associated minerals when he/she determines an appraisal to be inappropriate. The Director, Bureau of Land Management, shall review the use of this alternative methodology to determine if it has been properly applied in lieu of an appraisal. When the authorized officer uses the procedures contained in the methodology described herein to determine equal value, the notice of realty action issued in connection with the exchange shall state that the

ethodology procedures are being
ed pursuant to a determination by
e Director.

FR 16888, Apr. 20, 1983]

201.4 Legal description of property.

The public lands and interests in
blic lands proposed for exchange
ll be properly described and locata-
under the survey laws and stand-
s of the United States. The non-
deral lands may be described as part
a surveyed section or by a metes
bounds survey, tied to a township,
ge, meridian, and State, or may be
cribed by the description contained
n approved protraction diagram of
Bureau of Land Management.

01.5 Final requirements.

the end of the period provided in
notice of realty action and upon a
ermination by the authorized offi-
that a particular exchange is ac-
able, the owner or holder of the
Federal land and interest shall
ide the following:

Evidence of title acceptable to the
orized officer. (1) For private land
ers, any one of the documents set
in the "Standards for the Prepa-
n of Title Evidence in Land Ac-
tions by the United States" (De-
ment of Justice, 1970 ed.) that is
ptable to the authorized officer.

For States, if the property was
held in private ownership, a cer-
te of title as prescribed in
1.5(a)(1). If lands and interests in
have not been in private owner-
either of the following shall be
table evidence of title:

certification by the appropriate
officer that the property has not
sold or otherwise encumbered
certification under the official
the recorder of deeds or other
priate State officer that no in-
nt has been recorded or filed
ould encumber title to the prop-

certification by an abstractor
ract company that no instru-
as been recorded or filed that
d or would encumber title to
perty.

nveyance documents. All deeds
nited States shall be prepared
rdance with "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (Department of Justice, 1968 ed.). (1) Private property owners shall submit a warranty deed or other document of conveyance which meets Department of Justice title standards for property acquired by the United States conveying the privately-owned property to the United States, and stating that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. Deeds shall be executed, acknowledged and recorded in accordance with the laws of the State in which the lands are located.

(i) Any revenue stamps required by State law shall be affixed to the deed and cancelled.

(ii) A deed executed by an individual grantor shall disclose the marital status of the grantor. A married grantor shall join with the spouse to execute a deed to bar any right of courtesy, dower, community interest or any other claim to the property conveyed unless written evidence is submitted that shows that under the laws of the State where the conveyed property is located the grantor's spouse has no present or prospective interest in the lands.

(iii) Any deed executed by a partnership, association or other entity other than a corporation shall corrborate that the deed is executed pursuant to the articles of association or partnership or other similar document creating the entity. If there are none or if signing authority is not provided for in the document, the deed shall be signed by each member of the entity and each signor shall furnish a statement that he/she is a member. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(iv) Any deed executed by a corporation shall corroborate that the deed is executed pursuant to its bylaws or a resolution or order by the corporation's board of directors or other governing body. A copy of the bylaws, resolution or order shall accompany the deed and shall, unless not required by State law, bear the corporate seal. Where State law does not require such seal evidence, a citation of applicable State law shall be provided. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(2) States shall submit a deed of conveyance that includes a statement that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. The deed shall be executed, acknowledged and recorded in accordance with the laws of the State. A certification that the State officer executing the conveyance is authorized to do so under State law shall accompany the deed. When unsurveyed sections are used as exchange lands by a State, the exchange shall constitute a relinquishment of the State's right to the unsurveyed sections used in the exchange.

(c) *Taxes and equalizing money.* (1) Where taxes constitute a lien on the non-Federal property, the owner of the non-Federal land or interest shall furnish a bond with a qualified surety or other security acceptable to the authorized officer for an amount at least 20 percent in excess of taxes paid on the property for the previous year or assure payment of taxes by making a money deposit to the authorized officer in like amount. When evidence of payment of taxes acceptable to the authorized officer is furnished, the bond shall be released or the cash returned to the owner of the non-Federal lands and interests.

(2) A money payment for equalization of value shall not exceed 25 percent of the value of the public lands and interests being conveyed, but the amount of the money payment shall be reduced to as small an amount as possible.

§ 2201.6 Exchange agreement.

An exchange agreement may be entered into between the Bureau of Land Management, as represented by the authorized officer, and exchange party. The agreement shall identify the lands or the estate to be exchanged, all reservations and outstanding interests, any necessary cash equalization and all other terms, conditions, covenants and reservations.

§ 2201.7 Acceptance of conveyance and removal of improvements.

(a) *Acceptance of conveyance.* If the title and other evidence required of the owner of the non-Federal lands and interests in lands are in conformity with the law and regulations, the authorized officer may accept title to the non-Federal property conveyed to the United States. A patent or other document of conveyance for the property exchanged shall be issued and a notice of the issuance of said conveyance documents shall be published in the FEDERAL REGISTER. The Governor and the head of local governments shall be immediately notified of the issuance of conveyance documents for public lands located within their respective jurisdictions. A money payment, if required to equalize values, shall be made by the appropriate party prior to or at the date of conveyance.

(b) *Removal of improvements.* If any buildings, fencing or other movable improvements owned or erected by a party to an exchange on the non-Federal lands conveyed are not a part of the exchange proposal, the party may remove such improvements from the lands upon receipt of notice that the exchange has been approved: *Provided*, That such removal is accomplished with in the period specified in the notice or any reasonable extension that may be granted by the authorized officer.

(c) *Other improvements.* Where public lands to be conveyed under this part contain authorized improvements, other than those identified in § 2201.1(c) or those subject to patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner is not the exchange party, or the exchange party may compensate the owner of such authorized improvements and submit proof of compensation to the authorized officer.

§ 2201.8 Title evidence.

(a) If no exchange agreement is entered into, no action taken prior to issuance of patent or other document of conveyance shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

(b) If a party to a prospective exchange has submitted title evidence in connection with an exchange and processing of the proposal is terminated and the exchange will not be proposed again in the near future, the title evidence shall be returned to the exchange party. Where the deed has been recorded, a quitclaim deed for the land conveyed to the United States shall be issued under section 6 of the Act of April 28, 1930 (43 U.S.C. 872).

Subpart 2202—Exchanges: National Forest Exchange

§ 2202.1 Applicable regulations.

(a) All proposals for exchange for the consolidation or extension of national forests, under the authority and provisions of the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) shall be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture, in compliance with the regulations in 36 CFR part 254.

(b) The filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from appropriation, location or entry under the general mining laws but not from the applicability of those public land laws governing the use of the National Forest System under leases license or permit, or governing the disposal of mineral or vegetative resources, other than under the general mining laws. The segregative effect of the offer notation on the public land records shall terminate upon issuance of patent or other document of conveyance to such lands, upon rejection or denial of the exchange offer or 2 years from the date of the notation whichever occurs first.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

SOURCE: 51 FR 12612, Apr. 14, 1986, unless otherwise noted.

§ 2203.0-6 Policy.

When determining whether a fee exchange of the Federal coal deposits is in the public interest, it is the policy of the Department of the Interior to consider whether the exchange will create or maintain a situation inconsistent with the Federal anti-trust laws. The Bureau of Land Management, in making the determination of public interest, shall consider the advice of the Attorney General of the United States concerning whether the exchange will create or maintain a situation inconsistent with the Federal antitrust laws.

§ 2203.0-9 Cross references.

The authorized officer shall implement a fee exchange of Federal coal deposits in compliance with the requirements of subparts 2200 and 2201 on this title.

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon receipt of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish a notice of receipt of an exchange proposal as set forth in § 2201.2 of this title, which shall be distributed in accordance with § 2201.1(e) of this title and which shall include a request for public comment on the public interest factors of the exchange proposal.

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit on a form approved by the Director, Bureau of Land Management, specific information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

(b) The authorized officer shall transmit a copy of the information required by paragraph (a) of this section to the Attorney General upon its receipt.

(c) All non-proprietary information submitted under paragraph (a) of this section shall be made a part of the public record on each proposed exchange. With respect to proprietary information submitted under paragraph (a) of this section, only a description of the type of information submitted shall be included in the public record.

(d) Where the entity proposing a fee coal exchange has previously submitted the currently required information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 Public meeting.

Upon completion of an environmental analysis, but prior to the issuance of a notice of realty action, the authorized officer shall publish a notice in the FEDERAL REGISTER setting a time and place where a public meeting will be held to receive public comment on the public interest factors of the proposed exchange. Such notice shall be distributed in accordance with § 2201.1(e) of this title. The public meeting shall:

(a) Follow procedures established by the authorized officer, which shall be announced prior to the meeting; and

(b) Be recorded and a transcript prepared, with the transcript and all written submissions being made a part of the public record of the proposed exchange.

§ 2203.4 Consultation with the Attorney General.

(a) The authorized officer shall, at the conclusion of the comment period and public meeting provided for in § 2203.3 of this title, forward to the Attorney General copies of the comments received in response to the request for public comments and the transcript and copies of the written comments received at the public meeting.

(b) The authorized officer shall allow the Attorney General 90 days within which the Attorney General may advise, in writing, on the anti-trust consequences of the proposed exchange.

(c) If the Attorney General requests additional information concerning the proposed exchange, the authorized officer shall request, in writing, such information from the person proposing the exchange, allowing a maximum period of 30 days for the submission of the requested information. The 90-day period provided in paragraph (b) of this section shall be extended for the period required to obtain and submit the requested information, or 30 days, whichever is sooner.

(d) If the Attorney General notifies the authorized officer, in writing, that additional time is needed to review the anti-trust consequences of the proposed exchange, the time provided in paragraph (b) of this section, including any additional time provided under paragraph (c) of this section, shall be extended for the period requested by the Attorney General. If the Attorney General has not responded to the request for anti-trust review within the time granted for such review, including any extensions thereof, the authorized officer may proceed with the exchange without the advice of the Attorney General.

§ 2203.5 Action on advice of the Attorney General.

(a) The authorized officer shall make any advice received from the Attorney General a part of the public record on the proposed exchange.

(b) Except as provided in § 2203.4(d) of this title, the authorized officer shall not make a final decision on the proposed exchange and whether it is in the public interest until the advice of the Attorney General has been considered. The authorized officer shall, in the record of decision on the proposed exchange, discuss the consideration given any advice received from the Attorney General in reaching the final decision on the proposed exchange.

PART 2210—STATE EXCHANGES

Subpart 2212—Miscellaneous State Exchanges

§ 2212.1 General.

Because of the infrequency of transactions involving State exchanges under the Acts of May 7, 1932 (47 Stat. 150), section 3 of the Act of June 14, 1934 (48 Stat. 962), and the Act of December 7, 1942 (56 Stat. 1042), regulations covering these transactions are not codified. Any such transaction will be handled in a manner consistent with the authorizing laws and with the regulations in part 2200.

[35 FR 9549, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

PART 2240—NATIONAL PARK SYSTEM EXCHANGES

§ 2240.0-3 Authority.

(a) *Point Reyes National Seashore, Calif.* The Act of September 13, 1962 (76 Stat. 538; 16 U.S.C., secs. 459c-459c-7), providing for the establishment of the Point Reyes National Seashore in the State of California, authorizes the Secretary of the Interior, when the public interest will be benefited thereby, to acquire land, waters, and other property within the boundaries of the Point Reyes National Seashore by exchange. He may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within Arizona, California, Nevada, and Oregon, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that when such values are not equal the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the value of the properties exchanged.

(b) *Fire Island National Seashore.* The Act of September 11, 1964 (78 Stat. 928; 16 U.S.C., secs. 459e-459e-9), authorizes the Secretary of the Interior to establish an area to be known as the *Fire Island National Seashore* and to acquire by exchange lands within the boundaries of the seashore as specified in the Act. When acquiring land by exchange the Secretary may accept title to any nonfederally owned land located within the boundaries of the national seashore and may convey to the grantor any federally owned land under his jurisdiction. The properties so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to a grantor in order to equalize the values of the lands exchanged.

(c) *Lake Mead National Recreational Area.* The Act of October 8, 1964 (78 Stat. 1039, 16 U.S.C., sections 460n-460n-9) authorizes the Secretary of the Interior to revise the boundaries of the Lake Mead National Recreation

Area and to procure property within the exterior boundaries of such area in such manner as he shall consider to be in the public interest. In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within the boundaries of the recreation area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the values of the properties exchanged.

(d) *Whiskeytown-Shasta-Trinity National Recreation Area, Calif.* The Act of November 8, 1965 (79 Stat. 1295) authorizes the Secretary of the Interior to administer the Whiskeytown unit of the Whiskeytown-Shasta-Trinity National Recreation Area. The Secretary is authorized to accept title to any non-Federal property within any part of the recreation area and in exchange therefor to convey to the grantor any federally owned property under his jurisdiction within the State of California which he classifies as suitable for exchange or disposal. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the value of the properties exchanged.

(e) *Bighorn Canyon Recreation Area.* The Act of October 15, 1966 (16 U.S.C. 460t (Supplement III, 1965-67)) establishes the Bighorn Canyon National Recreation Area. It authorizes the Secretary of the Interior to accept title to any non-Federal property within the area and convey in exchange therefor any federally owned property under his jurisdiction in the States of Montana and Wyoming which he classifies as suitable for exchange or other disposal, notwithstanding any other provision of law. Property so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from, or pay cash to, the grantor in an exchange in order to equalize the values of the properties exchanged.

(f) *Act of July 15, 1968.* (1) The Act of July 15, 1968 (16 U.S.C.A. 460L-22, 1969 Supplement) authorizes the Secretary of the Interior to accept title to any non-Federal property or interest therein within a unit of the National Park System or miscellaneous area under his administration, in exchange for any federally owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal. The selected land shall be located in the same State as the offered land. Timber lands subject to harvest under a sustained yield program shall not be exchanged. Public hearings will be held in the area where the lands to be exchanged are located, if a written request therefor is submitted to the Secretary or his authorized officer prior to such exchange, by a State or a political subdivision thereof or by a party in interest. The value of the properties exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by payment of cash to the grantor or to the Secretary, as circumstances require. Payment of cash by the Secretary shall be made only from funds appropriated for the acquisition of land for the area.

(2) The term *National Park System* means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with 16 U.S.C. sections 1 and 2-4, and which are grouped into the following descriptive categories: (i) National parks, (ii) national monuments, (iii) national historical parks, (iv) national memorials, (v) national parkways, and (vi) national capital parks.

(3) The term *miscellaneous areas* includes lands under the administrative jurisdiction of another Federal agency, or lands in private ownership, and over which the National Park Service, under the direction of the Secretary of the Interior, pursuant to cooperative agreement, exercises supervision for recreational, historical, or other related purposes, and also any lands under the care and custody

f the National Park Service other
han those described above.
(g) *North Cascades National Park,*
Vashington. The Act of October 2,
968 (82 Stat. 926) establishes the
orth Cascades National Park, the
oss Lake National Recreation Area,
d the Lake Chelan National Recrea-
on Area. The Act authorizes the Sec-
tary of the Interior to accept title to
y non-Federal property within the
undaries of the park and the recrea-
n areas and in exchange therefor to
nvey to the grantor of such property
d federally owned property under
s jurisdiction in the State of Wash-
gton which he classifies as suitable
r exchange or other disposal. The
ues of the properties so exchanged
her shall be approximately equal,
if they are not, shall be equalized
the payment of cash to the grantor
to the Secretary as the circum-
nces require.
h) *Redwood National Park, Calif.*
e Act of October 2, 1968 (82 Stat.
) establishes the Redwood National
k. The Secretary of the Interior is
horized to accept title to any non-
ieral property within the bound-
s of the park, and outside of such
ndaries within prescribed limits in
hange for any federally owned
perty under the jurisdiction of the
eau of Land Management in Cali-
ia, except property needed for
lic use and management, which he
sifies as suitable for exchange or
r disposal. Such federally owned
erty shall also be available for use
he Secretary in payment of just
pensation for real property taken
uant to the Act. The values of the
erties exchanged either shall be
ximately equal or, if they are
hall be equalized by the payment
h to the grantor or to the Secre-
s the circumstances require.
Biscayne National Monument,
he Act of October 18, 1968 (Pub.
606) authorizes the Secretary of
terior to establish the Biscayne
al Monument, and to accept
to any non-Federal property
the boundaries of the national
nent and outside such bound-
vithin prescribed areas, in ex-
for any federally owned prop-
der his jurisdiction in the State
of Florida which he classifies as suitable for exchange or other disposal. The values of the properties exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as circumstances require.

[35 FR 9550, June 13, 1970]

§ 2240.1 General.

Exchanges to eliminate private holdings from national parks and national monuments for which no specific provisions are made in this section have generally reached the limits allowed by enabling legislation. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the regulations in part 2200.

[35 FR 9550, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

PART 2250—WILDLIFE REFUGE EXCHANGES

§ 2250.0-3 Authority.

(a) Section 4(b)(3) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire lands or interests therein by exchange (1) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (2) for the right to remove, in accordance with such terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the National Wildlife Refuge System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(b) Section 2(b) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire by purchase, donation, or otherwise, lands or interests therein necessary for the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

(c) Section 1 of the Act of August 22, 1957 (71 Stat. 412), as amended (16 U.S.C. 696) authorizes the Secretary of the Interior to acquire, for the National Key Deer Refuge, lands in designated areas in Florida which he finds suitable for the conservation and management of key deer and other wildlife by exchange for any federally-owned property in Florida which he classifies as suitable for exchange or other disposal. The values of the property so exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as required.

[35 FR 9551, June 13, 1970]

§ 2250.1 Applicable regulations.

Any such transaction will be handled in a manner consistent with the authorizing law and with the regulations in part 2200.

[35 FR 9551, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

PART 2270—MISCELLANEOUS EXCHANGES

Subpart 2271—Indian Reservation Exchanges

Sec.

2271.0-3 Authorities.
2271.1 Reservations established by statute.

Subpart 2272—Reclamation Exchanges

2272.1 Applicable regulations.

Subpart 2273—National Wild and Scenic Rivers System; National Trails System Exchanges

2273.0-3 Authority.

Subpart 2274—National Conservation Area Exchanges

2274.0-3 Authority.
2274.1 Procedures.

Subpart 2271—Indian Reservation Exchanges

§ 2271.0-3 Authorities.

(a) *Executive order reservations.* The Act of April 21, 1904 (33 Stat. 211; 43 U.S.C., sec. 149), authorizes the Secretary of the Interior to exchange any vacant, nonmineral, nontimbered, surveyed public lands located in the same State as the offered lands for any privately owned lands over which an Indian reservation has been extended by Executive order. The offered and selected lands must be approximately equal both in value and area. The applicant must pay all costs of consummating the exchange.

(b) *San Juan, McKinley, and Valencia Counties, N. Mex.* Section 13 of the Act of March 3, 1921 (41 Stat. 1239).

(c) *Apache, Coconino, and Navajo Counties, Ariz.* Section 2 of the Act of June 14, 1934 (48 Stat. 961), as supplemented by the Act of May 9, 1938 (52 Stat. 300).

[35 FR 9551, June 13, 1970]

§ 2271.1 Reservations established by statute.

Exchanges and lieu selections involving lands within Indian reservations occur infrequently. Regulations covering such transactions are, therefore, not codified. Any such transactions shall be handled in a manner consistent with the applicable statutes and with the general regulations in part 2200.

[35 FR 9551, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

Subpart 2272—Reclamation Exchanges

§ 2272.1 Applicable regulations.

(a) Regulations for exchange under the Act of August 13, 1953 (67 Stat. 566; 43 U.S.C. 451-451K), are in part 406 of this title and for exchanges under the Act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c), are in §§ 403.6-403.11 of this title.

[35 FR 9552, June 13, 1970]

Subpart 2273—National Wild and Scenic Rivers System; National Trails System Exchanges

§ 2273.0-3 Authority.

(a) *National wild and scenic rivers system.* The Act of October 2, 1968 (82 Stat. 906) institutes a national wild and scenic rivers system, designates the initial components of that system and provides for additional components to be added to the system. The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands within any component of the system administered by him to an average of not more than 100 acres per mile on both sides of the river. The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the system in exchange for any federally owned property under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(b) *National trails system.* The Act of October 2, 1968 (82 Stat. 919), provides for the establishment and designation of trails by the Secretary of the Interior or the Secretary of Agriculture, each on lands administered by him.

(1) The Act authorizes the Secretary of the Interior to accept title to any non-Federal property within the trail right-of-way in exchange for any federally owned property under his jurisdiction which is located in the State and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(2) The Act authorizes the Secretary of Agriculture to use authorities and procedures available to him in connection with exchanges of national forest lands.

(3) When an application involves the selection of public domain land outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the proponents shall comply with the regulations in part 2200.

[35 FR 9552, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

Subpart 2274—National Conservation Area Exchanges

§ 2274.0-3 Authority.

The Act of October 21, 1970, (16 U.S.C. 460y) provides for the establishment of the King Range National Conservation Area in the State of California and authorizes the Secretary of the Interior to acquire land or interests in land by exchange under the Act.

[41 FR 15851, Apr. 15, 1976]

§ 2274.1 Procedures.

(a) In making exchanges within the King Range National Conservation Area, the authorized officer may accept title to non-Federal land or interest in land within the Area defined in 16 U.S.C. 460y-8, or additions made thereto, and convey to the grantor of such land or interest in land an equal value of surveyed, unappropriated and unreserved public land or interest in land, in accordance with the following:

(1) The authorized officer shall have determined that the exchange is in the public interest.

(2) The public lands offered in exchange be in Humboldt and/or Mendocino County, California, and shall have been classified by the authorized officer for exchange.

(3) If the value of the offered lands or interests in land is at least equal to two-thirds of the value of the public land or interests in land, the exchange may be completed by payment of the difference in value to the Bureau of Land Management or the submittal of a cash deposit or a performance bond in an amount at least equal to the difference in value in order to assure that additional lands acceptable to the authorized officer and at least equal to the difference in value will be conveyed to the Government within a definite time to be specified by the authorized officer. If the value of the public lands offered in exchange for non-Federal lands or interests in non-Federal lands is at least equal to two-thirds of the value of the non-Federal lands, the exchange may be completed

upon payment by the authorized officer of the difference in value.

(b) Either party to an exchange may reserve minerals, easements, or rights of use either for its own benefits, for the benefit of third parties, or for the benefit of the general public. Any such reservation, whether in lands conveyed to or by the United States, shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the authorized officer. When minerals are reserved in lands conveyed by the United States, any person who prospects for or acquires the right to mine and remove such reserved mineral deposits shall be liable to the surface owners according to their respective interests for any actual damage to the surface or to the improvements thereon resulting from prospecting, entering, or mining operations.

Prior to entering lands in non-Federal ownership, such person shall either obtain the surface owner's written consent or file with the authorized officer a good and sufficient bond or undertaking to the United States in an amount acceptable to the authorized officer for the use and benefit of the surface owner to secure payment of such damages as may be determined in an action brought on the bond or undertaking in a court of competent jurisdiction. Where written consent is not obtained, a letter request shall be filed with the authorized officer for a determination of the amount of the bond or undertaking. A copy of such request will be served on the surface owner or owners by certified mail.

(c) Upon acceptance of title, any lands or interests in lands acquired by the United States by exchange under the authority of section 5 of the Act of October 21, 1970, shall become public lands, and shall become a part of the King Range National Conservation Area subject to all the laws and regulations applicable thereto without further order of the authorized officer.

(d) Any exchange transaction will be handled in a manner consistent with the authorizing law and regulations in part 2200 of this subchapter.

[41 FR 15851, Apr. 15, 1976]

Group 2300—Withdrawals

PART 2300—LAND WITHDRAWALS

Subpart 2300—Withdrawals, General

Sec.
2300.0-1 Purpose.
2300.0-3 Authority.
2300.0-5 Definitions.

Subpart 2310—Withdrawals, General: Procedure

2310.1 Procedures: General.
2310.1-1 Preapplication consultation.
2310.1-2 Submission of applications.
2310.1-3 Submission of withdrawal petitions.
2310.1-4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.
2310.2 Segregative effect of withdrawal applications or withdrawal proposals.
2310.2-1 Termination of segregative effect of withdrawal applications or withdrawal proposals.
2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.
2310.3-1 Publication and public meeting requirements.
2310.3-2 Development and processing of the case file for submission to the Secretary.
2310.3-3 Action by the Secretary: Public land orders and notices of denial.
2310.3-4 Duration of withdrawals.
2310.3-5 Compensation for improvements.
2310.3-6 Transfer of jurisdiction.
2310.4 Review and extensions of withdrawals.
2310.5 Special action on emergency withdrawals.

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

2320.0-3 Authority.
2320.1 Lands considered withdrawn or classified for power purposes.
2320.2 General determinations under the Federal Power Act.
2320.3 Applications for restoration.

AUTHORITY: 43 U.S.C. 1201; 43 U.S.C. 1740; E.O. 10355 (17 FR 4831, 4833).

SOURCE: 46 FR 5796, Jan. 19, 1981, unless otherwise noted.

Subpart 2300—Withdrawals, General

§ 2300.0-1 Purpose.

(a) These regulations set forth procedures implementing the Secretary of

nterior's authority to process
al land withdrawal applications
where appropriate, to make,
y or extend Federal land with-
is. Procedures for making emer-
withdrawals are also included.

The regulations do not apply to
rawals that are made by the Sec-
of the Interior pursuant to an
Congress which directs the issu-
of an order by the Secretary.
se, procedures applicable to
rawals authorized under the Sur-
fining Control and Reclamation
1977 (30 U.S.C. 1272(b); 1281),
ocedures relating to the Secre-
authority to establish Indian
ations or to add lands to the res-
ns pursuant to special legisla-
in accordance with section 7 of
t of June 18, 1934 (25 U.S.C.
s supplemented by section 1 of
t of May 1, 1936 (25 U.S.C.
are not included in these regula-

General procedures relating to
ocessing of revocation of with-
s and relating to the relinquish-
of reserved Federal land areas
included in this part.

-3 **Authority.**

Section 204 of the Federal
Policy and Management Act of
3 U.S.C. 1714) gives the Secre-
the Interior general authority
se, modify, extend or revoke
awals, but only in accordance
e provisions and limitations of
ction. Among other limitations,
deral Land Policy and Manage-
Act of 1976 provides that the
ry of the Interior does not
thority to:

ke, modify or revoke any with-
created by an Act of Congress;
ake a withdrawal which can be
ly by an Act of Congress;
odify or revoke any withdraw-
ng national monuments under
of June 8, 1906 (16 U.S.C. 431-
netimes referred to as the An-
Act;
odify or revoke any withdraw-
added lands to the National
Refuge System prior to Octo-
976, the date of approval of
ral Land Policy and Manage-
of 1976 or which thereafter adds lands to that System under the terms of that Act. In this connection, nothing in the Federal Land Policy and Management Act of 1976 is intended to modify or change any provision of the Act of February 27, 1976 (16 U.S.C. 668 dd(a)).

(2) Executive Order 10355 of May 26, 1952 (17 FR 4831), confers on the Secretary of the Interior all of the delegable authority of the President to make, modify and revoke withdrawals and reservations with respect to lands of the public domain and other lands owned and controlled by the United States in the continental United States or Alaska.

(3) The Act of February 28, 1958 (43 U.S.C. 155-158), sometimes referred to as the Engle Act, places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. These withdrawals, reservations or restrictions may only be made by an act of Congress, except in time of war or national emergency declared by the President or the Congress and except as otherwise expressly provided in the Act of February 28, 1958.

(4) Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) authorizes the Secretary of the Interior to regulate the management of the public lands as defined in the Act through instruments, such as memorandum of understanding, which the Secretary deems appropriate.

(5) Section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), authorizes the President and the Secretary to make withdrawals exceeding 5,000 acres, in the aggregate, in the State of Alaska subject to the provisions that such withdrawals shall not become effective until notice is provided in the FEDERAL REGISTER and to both Houses of the Congress and such withdrawals shall terminate unless Congress passes a Joint Resolution of approval within one year after the notice of withdrawal has been submitted to the Congress.

(b) The following references do not afford either withdrawal application processing or withdrawal authority but are provided as background information.

(1) Executive Order 6910 of November 26, 1934, and E.O. 6964 of February 5, 1935, as modified, withdrew sizable portions of the public lands for classification and conservation. These lands and the grazing districts estalished under the Taylor Grazing Act of 1934, as amended, are subject to the classification and opening procedures of section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315f); however, they are not closed to the operation of the mining or mineral leasing laws unless separately withdrawn or reserved, classified for retention from disposal, or precluded from mineral leasing or mining location under other authority.

(2) The Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411-1418), authorized the Secretary of the Interior through the Bureau of Land Management for retention or disposal under Federal ownership and management. Numerous classification decisions based upon this statutory authority were made by the Secretary of the Interior. For the effect of these classification with regard to the disposal and leasing laws of the United States, see subparts 2440 and 2461 of this title.

(3) Section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) provides for land use planning and resultant management decisions which may operate to totally eliminate a particular land use, including one or more *principal or major uses,* as defined in the Act. Withdrawals made pursuant to section 204 of the Federal Land Policy and Management Act of 1976 may be used in appropriate cases, to carry out management decisions, except that *public lands,* as defined in the Act, can be removed from or restored to the operation of the Mining Law of 1872, as amended, or transferred to another department, agency or office, only by withdrawal action pursuant to section 204 of the Federal Land Policy and Management Act of 1976 or other action pursuant to applicable law.

(4) The first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) provides, in part, that unless otherwise provided for by law, the Secretary of the Interior may permit Federal departments and agencies to use, occupy and develop public lands *only* through rights-of-way under section 507 of the Act (43 U.S.C. 1767); withdrawals under section 204 of the Act (43 U.S.C. 1714); and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 307(b) of the Act (43 U.S.C. 1737(b)).

(5) Section 701(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 note) provides that all withdrawals, reservations, classifications and designations in effect on October 21, 1976, the effective date of the Act, shall remain in full force and effect until modified under the provisions of the Act or other applicable law.

§ 2300.0–5 Definitions.

As used in this part, the term:

(a) *Secretary* means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President by and with the advice and consent of the Senate and to whom has been delegated the authority of the Secretary to perform the duties described in this part to be performed by the *Secretary.*

(b) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part to be performed by the *authorized officer.*

(c) *Act* means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), unless otherwise specified.

(d) *Lands* includes both upland and submerged land areas and any right or interest in such areas. To the extent provided in section 1 of the Act of February 28, 1958 (43 U.S.C. 155), the term also includes offshore waters.

(e) *Cultural resources* means those fragile and nonrenewable physical remains of human activity found in districts, sites, structures, burial mounds,

:lyphs, artifacts, objects, ruins,
of art, architecture or natural
:s or features which were impor-
o prehistoric, historic or other
nd resource use events.

Archeological areas/resources
sites or areas containing impor-
vidence or the physical remains
rmer but now extinct cultural
, their skeletons, settlements,
nents, artifacts, monuments and
otions.

Resource use means a land use
as its primary objective the
vation, conservation, enhance-
or development of:

Any renewable or nonrenewable
al resource indigenous to a par-
land area, including, but not
d to, mineral, timber, forage,
fish or wildlife resources, or

Any resource value associated
particular land area, including,
ot limited to, watershed, power,
wilderness, clean air or recre-
l values. The term does not in-
military or other governmental
ies requiring land sites only as
idental means to achieving an
ot related primarily to the pres-
on, conservation, enhancement
elopment of natural resources or
ce values indigenous to or asso-
with a particular land area.

Withdrawal means withholding
a of Federal land from settle-
sale, location, or entry under
or all of the general land laws,
purpose of limiting activites
those laws in order to maintain
public values in the area or re-
the area for a particular public
or program; or transferring
tion over an area of Federal
her than *property* governed by
leral Property and Administra-
vices Act (40 U.S.C. 472), from
artment, bureau or agency to
department, bureau or

partment means a unit of the
e branch of the Federal Gov-
which is headed by a member
resident's Cabinet.

ncy means a unit of the Exec-
anch of the Federal Govern-
hich is not within a Depart-

(k) *Office* means an office or bureau of the Department of the Interior.

(l) *Applicant* means any Federal department, agency or office.

(m) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority to allow for the orderly administration of the public lands.

(n) *Legal description* means a written land description based upon either an approved and filed Federal land survey executed as a part of the United States Public Land Survey System or, where specifically authorized under Federal law, upon a protraction diagram. In the absence of the foregoing, the term means a written description, approved by the authorized officer, which defines the exterior boundaries of a tract of land by reference to a metes and bounds survey or natural or other monuments.

(o) *Modify* or *modification* does not include, for the purposes of section 204 of the Act (43 U.S.C. 1714), the addition of lands to an existing withdrawal or the partial revocation of a withdrawal.

(p) *Withdrawal petition* means a request, originated within the Department of the Interior and submitted to the Secretary, to file an application for withdrawal.

(q) *Withdrawal proposal* means a withdrawal petition approved by the Secretary.

Subpart 2310—Withdrawals, General: Procedure

§ 2310.1 Procedures: General.

(a) The basic steps leading up to the making, modification or extension of a withdrawal, except emergency withdrawals, are:

(1) Preapplication consultation;

(2) Obtaining Secretarial approval of a withdrawal petition in appropriate cases;

(3) Submission for filing of an application for a requested withdrawal action;

(4) Publication in the FEDERAL REGISTER of a notice stating that a withdrawal proposal has been made or that an application has been submitted for filing.

(5) Negotiations between the applicant and the authorized officer as well as the accomplishment of investigations, studies and analyses which may be required to process an application.

(6) Preparation of the case file to be considered by the Secretary, including the authorized officer's findings and recommendations;

(7) Transmittal of the case file to the Director, Bureau of Land Management, for the Director's review and decision regarding the findings and recommendations of the authorized officer;

(8) Transmittal of the case file to the Secretary.

(9) Publication of a public land order or a notice of denial signed by the Secretary. If the application seeks a national defense withdrawal that may only be made by an Act of Congress, the Secretary will transmit to the Congress proposed legislation along with the Secretary's recommendations, and documentation relating thereto.

§ 2310.1-1 Preapplication consultation.

A potential applicant should contact the appropriate State office of the Bureau of Land Management well in advance of the anticipated submission date of an application. Early consultation can familiarize the potential applicant with the responsibilities of an applicant, the authorized officer and the Secretary. Early consultation also will assist in determining the need for a withdrawal, taking possible alternatives into account, increase the likelihood that the applicant's needs will be considered in ongoing land use planning, assist in determining the extent to which any public lands that may be involved would have to be segregated if an application is submitted; and result in preliminary determinations regarding the scheduling of various investigations, studies, analyses, public meetings and negotiations that may be required for a withdrawal. Studies and analyses should be programmed to ensure their completion in sufficient time to allow the Secretary or the Congress adequate time to act on the application before the expiration of the segregation period.

§ 2310.1-2 Submission of applications.

(a) Applications for the making, modification or extension of a withdrawal shall be submitted for filing, in duplicate, in the proper Bureau of Land Management office, as set forth in § 1821.2-1 of this title, except for emergency withdrawal requests and applications that are classified for national security reasons. Requests for emergency withdrawals and applications that are classified for national security reasons shall be submitted, in duplicate, in the Office of the Secretary, Department of the Interior, Washington, D.C. 20240.

(b) Before the authorized officer can take action on a withdrawal proposal, a withdrawal application in support thereof shall be submitted. The application may be submitted simultaneously with the making of a withdrawal proposal, in which case only the notice required by § 2310.3-1(a) of this title, referencing both the application and the withdrawal proposal, shall be published.

(c) No specific form is required, but, except as otherwise provided in § 2310.3-6(b) of this title, the application shall contain at least the following information:

(1) The name and address of the applicant. Where the organization intending to use the lands is different from the applicant, the name and address of such using agency shall also be included.

(2) If the applicant is a department or agency other than the Department of the Interior or an office thereof, a statement of the delegation or delegations of authority of the official acting on behalf of the department or agency submitting the application, substantiating that the official is empowered to act on behalf of the head of the department or agency in connection with all matters pertaining to the application.

(3) If the lands which are subject to an application are wholly or partially under the administration of any department or agency other than the

Department of the Interior, the Secretary shall make or modify a withdrawal only with the consent of the head of the department or agency concerned, except in the case of an emergency withdrawal. In such case, a copy of the written consent shall accompany the application. The requirements of section (e) of E.O. 10355 (17 FR 4831), shall be complied with in those instances where the Order applies.

(4) The type of withdrawal action that is being requested (See § 2300.0-5(h) of this title) and whether the application pertains to the making, extension or modification of a withdrawal.

(5) A description of the lands involved in the application, which shall consist of the following:

(i) A legal description of the entire land area that falls within the exterior boundaries of the affected area and the total acreage of such lands;

(ii) A legal description of the lands, Federal or otherwise, within the exterior boundaries that are to be excepted from the requested action, and after deducting the total acreage of all the excepted lands, the net remaining acreage of all Federal lands (as well as all non-Federal lands which, if they should be returned to or should pass to Federal ownership, would become subject to the withdrawal) within the exterior boundaries of the affected land areas;

(iii) In the case of a national defense withdrawal which can only be made by an Act of Congress, sections 3(2) and 3(3) of the Act of February 28, 1958 (43 U.S.C. 157 (2), (3)) shall be complied with in lieu of paragraphs (c)(5) (i) and (ii) of this section.

(6) If the application is for a withdrawal that would overlap, or that would add lands to one or more existing withdrawals, the application shall also contain:

(i) An identification of each of the existing withdrawals, including the project name, if any, the date of the withdrawal order, the number and type of order, if known, or, in lieu of the foregoing, a copy of the order;

(ii) As to each existing withdrawal that would be overlapped by the requested withdrawal, the total area and a legal description of the area that would be overlapped; and

(iii) The total acreage, Federal or otherwise, that would be added to the existing withdrawal, if the new application is allowed.

(7) The public purpose or statutory program for which the lands would be withdrawn. If the purpose or program for which the lands would be withdrawn is classified for national security reasons, a statement to that effect shall be included; but, if at all possible, a general description of the use to which the lands would be devoted, if the requested withdrawal is allowed, should be included. In the case of applications that are not classified for national security reasons, an analysis of the manner in which the lands as well as their natural resources and resource values would be used to implement the purpose or program shall be provided.

(8) The extent to which the lands embraced in the application are requested to be withheld from settlement, sale, location or entry under the public land laws, including the mining laws, together with the extent to which, and the time during which, the lands involved in the application would be temporarily segregated in accordance with § 2310.2 of this subpart.

(9) The type of temporary land use that, at the discretion of the authorized officer, may be permitted or allowed during the segregation period, in accordance with § 2310.2 of this subpart.

(10) An analysis and explanation of why neither a right-of-way under section 507 of the Act (43 U.S.C. 1767), nor a cooperative agreement under sections 302(b) (43 U.S.C. 1732(b)) and 307(b) (43 U.S.C. 1737(b)) of the act would adequately provide for the proposed use.

(11) The duration of the withdrawal, with a statement in justification thereof (see § 2310.3-4 of this title). Where an extension of an existing withdrawal is requested, its duration may not exceed the duration of the existing withdrawal.

(12) A statement as to whether any suitable alternative sites are available for the proposed use or for uses which the requested withdrawal action would

displace. The statement shall include a study comparing the projected costs of obtaining each alternative site in suitable condition for the intended use, as well as the projected costs of obtaining and developing each alternative site for uses that the requested withdrawal action would displace.

(13) A statement as to whether water will or will not be needed to fulfill the purpose of the requested withdrawal action.

(14) The place where records relating to the application can be examined by interested persons.

(d) Except in the case of an emergency withdrawal, if the preceding application requirements have not been met, or if an application seeks an action that is not within the scope of the Secretary's authority, the application may be rejected by the authorized officer as a defective application.

§ 2310.1-3 Submission of withdrawal petitions.

(a) Withdrawal petitions shall be submitted to the Director, Bureau of Land Management, for transmittal to the Secretary.

(b) No specific form is required, but the petition shall contain at least the following information:

(1) The office originating the petition;

(2) The type and purpose of the proposed withdrawal action (See § 2300.0-5(h) of this title) and whether the petition pertains to the making, extension or modification of a withdrawal;

(3) A legal description of the entire land area that falls within the exterior boundaries affected by the petition, together with the total acreage of such lands, and a map of the area;

(4) The extent to which and the time during which any public lands that may be involved in the petition would be temporarily segregated and the temporary land uses that may be permitted during the segregation period, in accordance with § 2310.2 of this title; and

(5) A preliminary identification of the mineral resources in the area.

(c) Except in the case of petitions seeking emergency withdrawals, if a petition is submitted simultaneously with a withdrawal application, the information requirements pertaining to withdrawal applications (See § 2310.1-2 of this title), shall supersede the requirements of this section.

(d) If a petition seeks an emergency withdrawal under the provisions of section 204(e) of the act, the petition shall be filed simultaneously with an application for withdrawal. In such instances, the petition/application shall provide as much of the information required by §§ 2310.1-2(c) and 2310.3-2(b) of this title as is available to the petitioner when the petition is submitted.

(e) Upon the approval by the Secretary of a petition for withdrawal, the petition shall be considered as a Secretarial proposal for withdrawal, and notice of the withdrawal proposal shall be published immediately in the FEDERAL REGISTER in accordance with § 2310.3-1(a) of this title. If a petition which seeks an emergency withdrawal is approved by the Secretary, the publication and notice provisions pertaining to emergency withdrawals shall be applicable. (See § 2310.5 of this title.)

§ 2310.1-4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.

(a) Withdrawal or extension applications and proposals shall be amended promptly to cancel the application or proposal, in whole or in part, with respect to any lands which the applicant, in the case of applications, or the office, in the case of proposals, determines are no longer needed in connection with a requested or proposed action. The filing of a cancellation notice in each such case shall result in the termination of the segregation of the public lands that are to be eliminated from the withdrawal application or withdrawal proposal. (See § 2310.2-1 of this title)

(b) The Secretary may deny an application if the costs (as defined in section 304(b) of the Act (43 U.S.C. 1734(b)) estimated to be incurred by the Department of the Interior would, in the judgment of the Secretary, be excessive in relation to available funds appropriated for processing applications requesting a discretionary withdrawal, or a modification or extension of a withdrawal.

§ 2310.2 Segregative effect of withdrawal applications or withdrawal proposals.

The following provisions apply only to applications or proposals to withdraw lands and not to applications or proposals seeking to modify or extend withdrawals.

(a) *Withdrawal applications or withdrawal proposals submitted on or after October 21, 1976.* Within 30 days of the submission for filing of a withdrawal application, or whenever a withdrawal proposal is made, a notice stating that the application has been submitted or that the proposal has been made, shall be published in the Federal Register by the authorized officer. Publication of the notice in the Federal Register shall segregate the lands described in the application or proposal from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice, for 2 years from the date of publication of the notice unless the segregative effect is terminated sooner in accordance with the provisions of this part. The notices published pursuant to the provisions of this section shall be the same notices required by § 2310.3-1 of this title. Publication of a notice of a withdrawal application that is based on a prior withdrawal proposal, notice of which was published in the Federal Register, shall not operate to extend the segregation period which commenced upon the publication of the prior withdrawal proposal.

(b) *Withdrawal applications submitted before October 21, 1976.* The public lands described in a withdrawal application filed before October 21, 1976, shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the Federal Register notice or notices that pertain to the application, unless the segregative effect of the application is terminated sooner in accordance with other provisions of this part. Any amendment made on or after October 21, 1976, of a withdrawal application submitted before October 21, 1976, for the purpose of adding Federal lands to the lands described in a previous application, shall require the publication in the Federal Register, within 30 days of receipt of the amended application, of a notice of the amendment of the withdrawal application. All of the lands described in the amended application which includes those lands described in the original application shall be segregated for 2 years from the date of publication of the notice of the amended application in the Federal Register.

(c) Applications for licenses, permits, cooperative agreements or other discretionary land use authorizations of a temporary nature that are filed on or after October 21, 1976, regarding lands involved in a withdrawal application or a withdrawal proposal and that are listed in the notices required by § 2310.3-2 of this title as permissible during the segregation period, may be approved by the authorized officer while the lands remain segregated.

(d) Except as provided in paragraph (c) of this section, applications for the use of lands involved in a withdrawal application or a withdrawal proposal, the allowance of which is discretionary, shall be denied.

(e) The temporary segregation of lands in connection with a withdrawal application or a withdrawal proposal shall not affect in any respect Federal agency administrative jurisdiction of the lands, and the segregation shall not have the effect of authorizing or permitting any use of the lands by the applicant or using agency.

§ 2310.2-1 Termination of the segregative effect of withdrawal applications or withdrawal proposals.

(a) The publication in the Federal Register of an order allowing a withdrawal application, in whole or in part, shall terminate the segregative effect of the application as to those lands withdrawn by the order.

(b) The denial of a withdrawal application, in whole or in part, shall result in the termination of the segregative effect of the application or proposal as to those lands where the withdrawal is disallowed. Within 30 days following the decision to disallow the application or proposal, in whole or in part, the authorized officer shall publish a notice in the Federal Register specifying the reasons for the denial and the date that the segregative period terminated. The termination date of the segregation period shall be noted promptly on the public land status records on or before the termination date.

(c) The cancellation, in whole or in part, of a withdrawal application or a withdrawal proposal shall result in the termination of the segregative effect of the application or proposal, as to those lands deleted from the application or proposal. The authorized officer shall publish a notice in the Federal Register, within 30 days following the date of receipt of the cancellation, specifying the date that the segregation terminated. The termination date of the segregation shall be noted promptly on the public land status records. If the cancellation applies to only a portion of the public lands that are described in the withdrawal application or withdrawal proposal, then the lands that are not affected by the cancellation shall remain segregated.

(d) The segregative effect resulting from the publication on or after October 21, 1976, of a Federal Register notice of the submission of a withdrawal application or the making of a withdrawal proposal shall terminate 2 years after the publication date of the Federal Register notice unless the segregation is terminated sooner by other provisions of this section. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of the termination date. The public land status records shall be noted as to the termination date of the segregation period on or before the termination date. Such a termination shall not affect the processing of the withdrawal application.

(e) The segregative effect resulting from the submission of a withdrawal application or withdrawal proposal before October 21, 1976, shall terminate on October 20, 1991, unless the segregation is terminated sooner by other provisions of this part. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of October 20, 1991. The public land status records shall be noted as to the termination date of the segregation period on or before October 20, 1991.

§ 2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.

§ 2310.3–1 Publication and public meeting requirements.

(a) When a withdrawal proposal is made, a notice to that effect shall be published immediately in the Federal Register. The notice shall contain the information required by § 2310.1–3 of this title. In the event a withdrawal petition, which subsequently becomes a withdrawal proposal, is submitted simultaneously with a withdrawal application, the information requirements for notices pertaining to withdrawal applications (See paragraph (b) of this section) shall supersede the information requirements of this paragraph. However, in such instances, the notice required by paragraph (b) of this section shall be published immediately without regard to the 30-day period allowed for the filing for publication in the Federal Register of withdrawal application notices.

(b)(1) Except for emergency withdrawals and except as otherwise provided in paragraph (a) of this section, within 30 days of the submission for filing of a withdrawal, extension or modification application, the authorized officer shall publish in the Federal Register a notice to that effect. The authorized officer also shall publish the same notice in at least one newspaper having a general circulation in the vicinity of the lands involved and, with the cooperation and assistance of the applicant, when appropriate, shall provide sufficient publicity to inform the interested public of the requested action.

(2) The notice shall contain, in summary form, the information required by § 2310.1–2 of this title, except that the authorized officer may exclude the information required by § 2310.1–2(c)(2) of this title, and as much of the descriptive information required by

§ 2310.1-2(c) (5) and (6) of this title as the authorized officer considers appropriate. The notice shall:

(i) Provide a legal description of the lands affected by the application, together with the total acreage of such lands;

(ii) Specify the extent to which and the time during which any lands that may be involved may be segregated in accordance with § 2310.2 of this title;

(iii) Identify the temporary land uses that may be permitted or allowed during the segregation period as provided for in § 2310.2(c) of this title;

(iv) Provide for a suitable period of at least 90 days after publication of the notice, for public comment on the requested action;

(v) Solicit written comments from the public as to the requested action and provide for one or more public meetings in relation to requested actions involving 5,000 or more acres in the aggregate and, as to requested actions involving less than 5,000 acres, solicit and evaluate the written comments of the public as to the requested action and as to the need for public meetings;

(vi) State, in the case of a national defense withdrawal which can only be made by an Act of Congress, that if the withdrawal is to be made, it will be made by an Act of Congress;

(vii) Provide the address of the Bureau of Land Management office in which the application and the case file pertaining to it are available for public inspection and to which the written comments of the public should be sent;

(viii) State that the application will be processed in accordance with the regulations set forth in part 2300 of this title;

(ix) Reference, if appropriate, the FEDERAL REGISTER in which the notice of a withdrawal proposal, if any, pertaining to the application was published previously;

(x) Provide such additional information as the authorized officer deems necessary or appropriate.

(c)(1) In determining whether a public meeting will be held on applications involving less than 5,000 acres of land, the authorized officer shall consider whether or not:

(i) A large number of persons have expressed objections to or suggestions regarding the requested action;

(ii) The objections or suggestions expressed appear to have merit without regard to the number of persons responding;

(iii) A public meeting can effectively develop information which would otherwise be difficult or costly to accumulate;

(iv) The requested action, because of the amount of acreage involved, the location of the affected lands or other relevant factors, would have an important effect on the public, as for example, the national or regional economy;

(v) There is an appreciable public interest in the lands or their use, as indicated by the records of the Bureau of Land Management;

(vi) There is prevailing public opinion in the area that favors public meetings or shows particular concern over withdrawal actions; and

(vii) The applicant has requested a public meeting.

(2) A public meeting, whether required or determined by the authorized officer to be necessary, shall be held at a time and place convenient to the interested public, the applicant and the authorized officer. A notice stating the time and place of the meeting, shall be published in the FEDERAL REGISTER and in at least one newspaper having a general circulation in the vicinity of lands involved in the requested action, at least 30 days before the scheduled date of the meeting.

§ 2310.3–2 Development and processing of the case file for submission to the Secretary.

(a) Except as otherwise provided in § 2310.3–6(b) of this title, the information, studies, analyses and reports identified in this paragraph that are required by applicable statutes, or which the authorized officer determines to be required for the Secretary or the Congress to make a decision or recommendation on a requested withdrawal, shall be provided by the applicant. The authorized officer shall assist the applicant to the extent the authorized officer considers it necessary or appropriate to do so. The qualifications of all specialists utilized by either the authorized officer or the applicant to prepare the information, studies, analyses and reports shall be provided.

(b) The information, studies, analyses and reports which, as appropriate, shall be provided by the applicant shall include:

(1) A report identifying the present users of the lands involved, explaining how the users will be affected by the proposed use and analyzing the manner in which existing and potential resource uses are incompatible with or conflict with the proposed use of the lands and resources that would be affected by the requested action. The report shall also specify the provisions that are to be made for, and an economic analysis of, the continuation, alteration or terminaton of existing uses. If the provisions of § 2310.3-5 of this title are applicable to the proposed withdrawal, the applicant shall also furnish a certification that the requirements of that section shall be satisfied promptly if the withdrawal is allowed or authorized.

(2) If the application states that the use of water in any State will be necessary to fulfill the purposes of the requested withdrawal, extension or modification, a report specifying that the applicant or using agency has acquired, or proposes to acquire, rights to the use of the water in conformity with applicable State laws and procedures relating to the control, appropriation, use and distribution of water, or whether the withdrawal is intended to reserve, pursuant to Federal law, sufficient unappropriated water to fulfill the purposes of the withdrawal. Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant withdrawal order, as provided in § 2310.3-3(b) of this title and only to the extent needed for the purpose or purposes of the withdrawal as expressed in the withdrawal order. The applicant shall also provide proof of notification of the involved State's department of water resources when a land use needed to carry out the purposes of the requested withdrawal will involve utilization of the water resources in a State. As a condition to the allowance of an order reserving water, the applicant shall certify to the Secretary that it shall quantify the amount of water to be reserved by the order.

(3) An environmental assessment, an environmental impact statement or any other documents as are needed to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and the regulations applicable thereto. The authorized officer shall participate in the development of environmental assessments or impact statements. The applicant shall designate the Bureau of Land Management as a cooperating agency and shall comply with the requirements of the regulations of the Council on Environmental Quality. The Bureau of Land Management shall, at a minimum, independently evaluate and review the final product. The following items shall either be included in the assessment or impact statement, or they may be submitted separately, with appropriate cross references.

(i) A report on the identification of cultural resources prepared in accordance with the requirements of 36 CFR part 800, and other applicable regulations.

(ii) An identification of the roadless areas or roadless islands having wilderness characteristics, as described in the Wilderness Act of 1964 (16 U.S.C. 1131, *et seq.*), which exist within the area covered by the requested withdrawal action.

(iii) A mineral resource analysis prepared by a qualified mining engineer, engineering geologist or geologist which shall include, but shall not be limited to, information on: General geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential and present and potential market demands.

(iv) A biological assessment of any listed or proposed endangered or threatened species, and their critical habitat, which may occur on or in the vicinity of the involved lands, prepared in accordance with the provisions of section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536), and regulations applicable thereto, if the Secretary determines that assessment is required by law.

(v) An analysis of the economic impact of the proposed uses and changes in use associated with the requested action on individuals, local communities, State and local government interests, the regional economy and the Nation as a whole.

(vi) A statement as to the extent and manner in which the public participated in the environmental review process.

(4) A statement with specific supporting data, as to:

(i) Whether the lands involved are floodplains or are considered wetlands; and

(ii) Whether the existing and proposed uses would affect or be affected by such floodplains or wetlands and, if so, to what degree and in what manner. The statement shall indicate whether, if the requested action is allowed, it will comply with the provisions of Executive Orders 11988 and 11990 of May 24, 1977 (42 FR 26951; 26961).

(5) A statement of the consultation which has been or will be conducted with other Federal departments or agencies; with regional, State and local Government bodies; and with individuals and nongovernmental groups regarding the requested action.

(c) Prior to final action being taken in connection with an application, the applicant shall prepare, with the guidance and participation of the authorized officer, and subject to the approval of the authorized officer, the Secretary and other affected departments, agencies or offices, a resource management plan and implementation program regarding the use and management of any public lands with their related resources uses. Consideration shall be given to the impact of the proposed reservation on access to and the use of the land areas that are located in the vicinity of the lands proposed to be withdrawn. Where appropriate, the plan and program will be implemented by means of a memorandum of understanding between the affected agencies. Any allocation of jurisdiction between the agencies shall be effected in the public land order or legislation. In those cases where the Secretary, acting through the Bureau of Land Management, would continue to exercise partial jurisdiction, resource management of withdrawn areas may be governed by the issuance of management decisions by the Bureau of Land Management to implement land use plans developed or revised under the land use planning requirements of section 202 of the Act (43 U.S.C. 1712).

(d) In regard to national defense withdrawals that can only be made by an Act of Congress, and to the extent that they are not otherwise satisfied by the information, studies, analyses and reports provided in accordance with the provisions of this section, the provisions of section 3(7) of the Act of February 28, 1958 (43 U.S.C. 157(7)), shall be complied with.

(e) The authorized officer shall develop preliminary findings and recommendations to be submitted to the Secretary, advise the applicant of the findings and recommendations, and provide the applicant an opportunity to discuss any objections thereto which the applicant may have.

(f) Following the discussion process, or in the absence thereof, the authorized officer shall prepare the findings, keyed specifically to the relevant portions of the case file, and the recommendations to the Secretary in connection with the application. The authorized officer also shall prepare, for consideration by the Secretary, a proposed order or notice of denial. In the case of a national defense withdrawal which can only be made by an Act of Congress, the authorized officer shall prepare, with the cooperation of the applicant, a draft legislative proposal to implement the applicant's withdrawal request, together with proposed recommendations for submission by the Secretary to the Congress. The findings and recommendations of the authorized officer, and the other documents previously specified in this section to be prepared by the authorized officer shall be made a part of the case file. The case file shall then be sent to the Director, Bureau of Land Management. At the same time, a copy of the findings and recommendations of the authorized officer shall be sent to the applicant.

(1) If the applicant objects to the authorized officer's findings and recommendations to the Secretary, the applicant may, within 30 days of the receipt by the applicant of notification thereof, state its objections in writing and request the Director to review the authorized officer's findings and recommendations. The applicant shall be advised of the Director's decision within 30 days of receipt of the applicant's statement of objections in the Bureau of Land Management's Washington office. The applicant's statement of objections and the Director's decision shall be made a part of the case file and thereafter the case file shall be submitted to the Secretary.

(2) If the applicant disagrees with the decision of the Director, Bureau of Land Management, the applicant may, within 30 days of receipt by the applicant of the Director's decision, submit to the Secretary a statement of reasons for disagreement. The statement shall be considered by the Secretary together with the findings and recommendations of the authorized officer, the applicant's statement of objections, the decision of the Director, the balance of the case file and such additional information as the Secretary may request.

§ 2310.3-3 Action by the Secretary: Public land orders and notices of denial.

(a) Except for national defense withdrawals which can only be made by an Act of Congress, and except as may be otherwise provided in section 1(d) of Executive Order 10355 (17 FR 4833), for applications that are subject to that order, the allowance or denial, in whole or in part, of a withdrawal, modification or extension application, may only be made by the Secretary.

(b)(1) Before the allowance of an application, in whole or in part, the Secretary shall first approve all applicable memoranda of understanding and the applicant shall make all certifications required in this part. When an application has been finally allowed, in whole or in part, by the Secretary, an order to that effect shall be published promptly in the FEDERAL REGISTER. Each order shall be designated as, and shall be signed by the Secretary and issued in the form of, a *public land order*. Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant public land order. In appropriate cases, the public land order also shall refer to the memorandum of understanding discussed in § 2310.3-2(c) of this title and shall be drawn to comply with § 2310.3-6 of this title.

(2) On the same day an order withdrawing 5,000 or more acres in the aggregate is signed, the Secretary shall advise, in writing, each House of the Congress, or in the case of an emergency withdrawal, the appropriate Committee of each House, of the withdrawal action taken. Pursuant to the Secretary's authority under the act, the notices that are sent to the Congress shall be accompanied by the information required by section 204(c)(2) of the Act (43 U.S.C. 1714(c)(2)), except in the case of an emergency withdrawal, transmittal of the required information may be delayed as provided in § 2310.5(c) of this title.

(c) When the action sought in an application involves the exercise by the Secretary of authority delegated by Executive Order 10355 (17 FR 4831) and the Secretary denies the application in whole or in part, the applicant shall be notified of the reasons for the Secretary's decision. The decision shall be subject to further consideration only if the applicant informs the Secretary, in writing, within 15 days of the receipt by the applicant of the Secretary's decision, that the applicant has submitted the matter to the Office of Management and Budget for consideration and adjustment, as provided for in section 1(d) of the Executive Order.

(d) A withdrawal application shall be denied, if, in the opinion of the Secretary, the applicant is attempting to circumvent the Congressional review provisions of section 204(c)(1) of the Act (43 U.S.C. 1714(c)(1)) concerning withdrawals of 5,000 or more acres in the aggregate.

(e) When an application is denied in its entirety by the Secretary, a notice to that effect, signed by the Secretary, shall be published promptly in the FEDERAL REGISTER.

(f) In the case of a national defense withdrawal that may only be made by an Act of Congress, the Secretary shall transmit to the Congress proposed legislation effecting the withdrawal requested, together with the recommendations of the Secretary which may or may not support the proposed legislation in whole or in part. The proposed legislation shall contain such provisions for continued operation of the public land laws as to the public land areas included in the requested withdrawal as shall be determined by the Secretary to be compatible with the intended military use.

§ 2310.3–4 Duration of withdrawals.

(a) An order initially withdrawing 5,000 or more acres of land in the aggregate, on the basis of the Secretary's authority under section 204 of the Act (43 U.S.C. 1714), may be made for a period not to exceed 20 years from the date the order is signed, except that withdrawals exceeding 5,000 acres in the State of Alaska shall not become effective until notice is provided in the FEDERAL REGISTER and to both Houses of Congress. All orders withdrawing 5,000 or more acres in the aggregate shall be subject to the Congressional review provision of section 204(c) of the Act (43 U.S.C. 1714(c)), except as follows:

(1) A National Wildlife Refuge System withdrawal may not be terminated as provided in section 204(c)(1) of the Act (43 U.S.C 1714(c)(1)) other than by an Act of Congress; or

(2) A withdrawal exceeding 5,000 acres in the State of Alaska shall terminate unless Congress passes a Joint Resolution of approval within 1 year after the notice of such withdrawal has been submitted to the Congress.

(b) An order initially withdrawing less than 5,000 acres of land, in the aggregate, on the basis of the Secretary's authority under section 204 of the Act (43 U.S.C. 1714), may be made:

(1) For such time as the Secretary determines desirable for a resource use;

(2) For not more than 20 years for any other use, including, but not limited to, the use of lands for non-resource uses, related administrative sites and facilities or for other proprietary purposes; or

(3) For not more than 5 years to preserve the lands for a specific use then under consideration by either House of Congress.

(c) An order withdrawing lands on the basis of an emergency as provided for in section 204(e) of the Act (43 U.S.C. 1714(e)) may be made for not more than 3 years.

(d) Except for emergency withdrawals, withdrawals of specific duration may be extended, as provided for in § 2310.4 of this title.

§ 2310.3–5 Compensation for improvements.

(a) When an application is allowed, the applicant shall compensate the holder of record of each permit, license or lease lawfully terminated or revoked after the allowance of an application, for all authorized improvements placed on the lands under the terms and conditions of the permit, license or lease, before the lands were segregated or withdrawn. The amount of such compensation shall be determined by an appraisal as of the date of revocation or termination of the permit, license or lease, but shall not exceed fair market value. To the extent such improvements were constructed with Federal funds, they shall not be compensable unless the United States has been reimbursed for such funds prior to the allowance of the application and then only to the extent of the sum that the United States has received.

(b) When an application is allowed that affects public lands which are subject to permits or leases for the grazing of domestic livestock and that is required to be terminated, the applicant shall comply with the cancellation notice and compensation requirements of section 402(g) of the Act (43 U.S.C. 1752(g)), to the extent applicable.

§ 2310.3–6 Transfer of jurisdiction.

A public land order that reserves lands for a department, agency or office, shall specify the extent to which jurisdiction over the lands and their related resource uses will be exercised by that department, agency or office. (See § 2310.3-2(c) of this title).

§ 2310.4 Review and extensions of withdrawals.

(a) Discretionary withdrawals of specific duration, whether made prior to or after October 21, 1976, shall be reviewed by the Secretary commencing at least 2 years before the expiration date of the withdrawal. When requested, the department, agency or office benefitting from the withdrawal shall promptly provide the Secretary with the information required by § 2310.1-2(c) of this title, and the information required by § 2310.3-2(b) of this title, in the form of a withdrawal extension application with supplemental information. If the concerned department, agency or office is delinquent in responding to such request, the deliquency shall constitute a ground for not extending the withdrawal. Such withdrawals may be extended or further extended only upon compliance with these regulations, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period that shall not exceed the duration of the original withdrawal period. In allowing an extension, the Secretary shall comply with the provisions of section 204(c) of the Act (43 U.S.C. 1714(c)), or section 204(d) of the Act (43 U.S.C. 1714(d)), whichever is applicable; and, whether or not an extension is allowed, the Secretary shall report promptly on the decision for each pending extension to the Congressional Committees that are specified in section 204(f) of the Act (43 U.S.C. 1714(f)).

(b) Notwithstanding the provisions of this section, if the Secretary determines that a National Wildlife Refuge System withdrawal of specific duration shall not be extended, the Secretary shall nevertheless extend or reextend the withdrawal until such time as the withdrawal is terminated by an Act of Congress.

§ 2310.5 Special action on emergency withdrawals.

(a) When the Secretary determines, or when either one of the two Committees of the Congress that are specified in section 204(e) of the Act (43 U.S.C. 1714(e)) notifies the Secretary, that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost, the Secretary shall immediately make a withdrawal which shall be limited in its scope and duration to the emergency. An emergency withdrawal shall be effective when signed, shall not exceed 3 years in duration and may not be extended by the Secretary. If it is determined that the lands involved in an emergency withdrawal should continue to be withdrawn, a withdrawal application should be submitted to the Bureau of Land Management in keeping with the normal procedures for processing a withdrawal as provided for in this subpart. Such applications will be subject to the provisions of section 204(c) of the Act (43 U.S.C. 1714(c)), or section 204(d) of the Act (43 U.S.C. 1714(d), whichever is applicable, as well as section 204(b)(1) of the Act (43 U.S.C. 1714(b)(1)).

(b) When an emergency withdrawal is signed, the Secretary shall on the same day, send a notice of the withdrawal to the two Committees of the Congress that are specified for that purpose in section 204(e) of the Act (43 U.S.C. 1714(e)).

(c) The Secretary shall forward a report to each of the aforementioned committees within 90 days after filing with them the notice of emergency withdrawal. Reports for all such withdrawals, regardless of the amount of acreage withdrawn, shall contain the information specified in section 204(c)(2) of the Act (43 U.S.C. 1714(c)(2)).

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

§ 2320.0-3 Authority.

(a) Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818), provides that any lands of the United States included in an application for power development under that Act shall, from the date of filing of an application therefor, be reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Federal Energy Regulatory Commission or by Congress. This statute also provides that whenever the Commission shall determine that the value of any lands of the United States withdrawn or classified for power purposes shall not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection for such purposes under such restrictions as the Commission may determine are necessary, and subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any and all of the lands for power purposes. Before any lands are declared open to location, entry or selection, the Secretary shall give notice of his intention to make this declaration to the Governor of the State within which such lands are located, and the State shall have a preference for a period of 90 days from the date of this notice to file under any applicable law or regulation an application of the State, or any political subdivision thereof, for any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways. The 90-day preference does not apply to lands which remain withdrawn for national forest or other purposes.

(b) The Mining Claims Rights Restoration Act of 1955 (30 U.S.C. 621 *et seq.*), opened public lands which were then, or thereafter, withdrawn or classified for power purposes, with specified exceptions, to mineral location and development under certain circumstances.

2320.1 Lands considered withdrawn or classified for power purposes.

The following classes of lands of the United States are considered as withdrawn or classified for the purposes of section 24 of the Federal Power Act (16 U.S.C. 818): Lands withdrawn for powersite reserves under sections 1 and 2 of the Act of June 25, 1910, as amended (43 U.S.C. 141-148); lands included in an application for power development under the Federal Power Act (16 U.S.C. 818); lands classified for powersite purposes under the Act of March 3, 1879 (43 U.S.C. 31); lands designated as valuable for power purposes under the Act of June 25, 1910, as amended (43 U.S.C. 148); the Act of June 9, 1916 (39 Stat. 218, 219), and the Act of February 26, 1919 (40 Stat. 1178, 1180); lands within final hydroelectric power permits under the Act of February 15, 1901 (43 U.S.C. 959); and lands within transmission line permits or approved rights-of-way under the aforementioned Act of February 15, 1901, or the Act of March 4, 1911 (43 U.S.C. 961).

§ 2320.2 General determinations under the Federal Power Act.

(a) On April 22, 1922, the Federal Power Commission (as predecessor to the Federal Energy Regulatory Commission) made a general determination "that where lands of the United States have heretofore been or hereafter may be reserved or classified as powersites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes have been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the Commission determines that the value of such lands so reserved or classified or so applied for or authorized, shall not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Power Act."

(b) The regulations governing mining locations on lands withdrawn or classified for power purposes, including lands that have been restored and opened to mining locations under section 24 of the Federal Power Act, are contained in subpart 3730 and in Group 3800 of this title.

§ 2320.3 Applications for restoration.

(a) Other than with respect to national forest lands, applications for restoration and opening of lands withdrawn or classified for power purposes under the provisions of section 24 of the Federal Power Act shall be filed, in duplicate, in the proper office of the Bureau of Land Management as set forth in § 2321.2-1 of this title. No particular form of application is required, but it shall be typewritten or in legible handwriting, and it shall contain the information required by 18 CFR 25.1. Each application shall be accompanied by a service charge of $10 which is not returnable.

(b) Favorable action upon an application for restoration shall not give the applicant any preference right when the lands are opened.

PART 2360—NATIONAL PETROLEUM RESERVE IN ALASKA

Subpart 2361—Management and Protection of the National Petroleum Reserve in Alaska

Sec.

2361.0-1 Purpose.
2361.0-2 Objectives.
2361.0-3 Authority.
2361.0-4 Responsibility.
2361.0-5 Definitions.
2361.0-6 [Reserved]
2361.0-7 Effect of Law.
2361.1 Protection of the environment.
2361.2 Use authorizations.
2361.3 Unauthorized use and occupancy.

Subpart 2361—Management and Protection of the National Petroleum Reserve in Alaska

SOURCE: 42 FR 28721, June 3, 1977, unless otherwise noted.

§ 2361.0-1 Purpose.

The purpose of the regulations in this subpart is to provide procedures for the protection and control of environmental, fish and wildlife, and historical or scenic values in the National Petroleum Reserve in Alaska pursuant to the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*).

§ 2361.0-2 Objectives.

The objective of this subpart is to provide for the protection of the environmental, fish and wildlife, and historical or scenic values of the Reserve so that activities which are or might be detrimental to such values will be carefully controlled to the extent consistent with the requirements of the Act for petroleum exploration of the reserve.

§ 2361.0-3 Authority.

The Naval Petroleum Reserve Production Act of 1976 (90 Stat. 303, 42 U.S.C. 6501, *et seq.*) is the statutory authority for these regulations.

§ 2361.0-4 Responsibility.

(a) The Bureau of Land Management (BLM) is responsible for the surface management of the reserve and protection of the surface values from environmental degradation, and to prepare rules and regulations necessary to carry out surface management and protection duties.

(b) The U.S. Geological Survey is responsible for management of the continuing exploration program during the interim between the transfer of jurisdiction from the U.S. Navy to the U.S. Department of the Interior and the effective date of any legislation for a permanent development and production program to enforce regulations and stipulations which relate to the exploration of petroleum resources of the Reserve, and to operate the South Barrow gas field or such other fields as may be necessary to supply gas at reasonable and equitable rates to the Native village of Barrow and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the U.S. located at or near Point Barrow, Alaska.

§ 2361.0-5 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) *Act* means the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303, 42 U.S.C. 6501, *et seq.*).

(b) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the au-

iority to perform the duties of this
ibpart.
(c) *Exploration* means activities con-
icted on the Reserve for the purpose
evaluating petroleum resources
hich include crude oil, gases of all
nds (natural gas, hydrogen, carbon
oxide, helium, and any others), natu-
l gasoline, and related hydrocarbons
ar sands, asphalt, propane butane,
c.), oil shale and the products of
ch resources.
(d) *Reserve* means those lands within
e National Petroleum Reserve in
laska (prior to June 1, 1977, designat-
l Naval Petroleum Reserve No. 4)
hich was established by Executive
der of the President, dated February
, 1923, except for tract Numbered 1
described in Public Land Order 2344
he Naval Arctic Research Laborato-
—surface estate only) dated April 24,
61.
(e) *Secretary* means the Secretary of
e Interior.
(f) *Special areas* means areas within
e reserve identified by the Secretary
the Interior as having significant
bsistence, recreational, fish and
ldlife, or historical or scenic value
d, therefore, warranting maximum
otection of such values to the extent
nsistent with the requirements of
e Act for the exploration of the Re-
rve.
(g) *Use authorization* means a writ-
n approval of a request for use of
nd or resources.

361.0-6 [Reserved]

361.0-7 Effect of Law.

(a) Subject to valid existing rights,
l lands within the exterior bound-
ies of the Reserve are reserved and
thdrawn from all forms of entry and
sposition under the public land laws,
cluding the mining and mineral leas-
g laws, and all other Acts.
(b) Notwithstanding the provisions
paragraph (a) of this section, the
cretary is authorized to:
(1) Make dispositions of mineral ma-
rials pursuant to the Act of July 31,
47 (61 Stat. 681), as amended (30
S.C. 601), for appropriate use by
aska Natives.
(2) Make such dispositions of miner-
materials and grant such rights-of-
way, licenses, and permits as may be necessary to carry out his responsibilities under the Act.

(3) Convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

(c) All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Reserve shall remain in full force and effect to the extent not inconsistent with the Act.

(d) To the extent not inconsistent with the Act, all other public land laws are applicable.

§ 2361.1 Protection of the environment.

(a) The authorized officer shall take such action, including monitoring, as he deems necessary to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve.

(b) The Cooperative Procedures of January 18, 1977, for National Petroleum Reserve in Alaska between the Bureau of Land Management (BLM) and the U.S. Geological Survey (GS) (42 FR 4542, January 25, 1977) provides the procedures for the mutual cooperation and interface of authority and responsibility between GS and BLM concerning petroleum exploration activities (i.e., geophysical and drilling operations), the protection of the environment during such activities in the Reserve, and other related activities.

(c) Maximum protection measures shall be taken on all actions within the Utikok River Uplands, Colville River, and Teshekpuk Lake special areas, and any other special areas identified by the Secretary as having significant subsistence, recreational, fish and wildlife, or historical or scenic value. The boundaries of these areas and any other special areas identified by the Secretary shall be identified on maps and be available for public inspection in the Fairbanks District Office. In addition, the legal description of the three special areas designated herein and any new areas identified hereafter will be published in the Federal Register and appropriate local newspapers. Maximum protection may include, but is not limited to, requirements for:

(1) Rescheduling activities and use of alternative routes, (2) types of vehicles and loadings, (3) limiting types of aircraft in combination with minimum flight altitudes and distances from identified places, and (4) special fuel handling procedures.

(d) Recommendations for additional special areas may be submitted at any time to the authorized officer. Each recommendation shall contain a description of the values which make the area special, the size and location of the area on appropriate USGS quadrangle maps, and any other pertinent information. The authorized officer shall seek comments on the recommendation(s) from interested public agencies, groups, and persons. These comments shall be submitted along with his recommendation to the Secretary. Pursuant to section 104(b) of the Act, the Secretary may designate that area(s) which he determines to have special values requiring maximum protection. Any such designated area shall be identified in accordance with the provision of § 2361.1(c) of this subpart.

(e) (1) To the extent consistent with the requirements of the Act and after consultation with appropriate Federal, State, and local agencies and Native organizations, the authorized officer may limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas. On proper notice as determined by the authorized officer, such actions may be taken to protect fish and wildlife breeding, nesting, spawning, lambing of calving activity, major migrations of fish and wildlife, and other environmental, scenic, or historic values.

(2) The consultation requirement in § 2361.1(e)(1) of this subpart is not required when the authorized officer determines that emergency measures are required.

(f) No site, structure, object, or other values of historical archaelogical, cultural, or paleontological character, including but not limited to historic and prehistoric remains, fossils, and artifacts, shall be injured, altered, destroyed, or collected without a current Federal Antiquities permit.

§ 2361.2 Use authorizations.

(a) Except for petroleum exploration which has been authorized by the Act, use authorizations must be obtained from the authorized officer prior to any use within the Reserve. Only those uses which are consistent with the purposes and objectives of the Act will be authorized.

(b) Except as may be limited, restricted, or prohibited by the authorized officer pursuant to § 2361.1 of this subpart or otherwise, use authorizations are not required for (1) subsistence uses (e.g., hunting, fishing, and berry picking) and (2) recreational uses (e.g., hunting, fishing, backpacking, and wildlife observation).

(c) Applications for use authorizations shall be filed in accordance with applicable regulations in this chapter. In the absence of such regulation, the authorized officer may make such dispositions absence of such regulations, the author-of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under the Act.

(d) In addition to other statutory or regulatory requirements, approval of applications for use authorizations shall be subject to such terms and conditions which the authorized officer determines to be necessary to protect the environmental, fish and wildlife, and historical or scenic values of the Reserve.

§ 2361.3 Unauthorized use and occupancy.

Any person who violates or fails to comply with regulations of this subpart is subject to prosecution, including trespass and liability for damages, pursuant to the appropriate laws.

PART 2370—RESTORATIONS AND REVOCATIONS

Subpart 2370—Restorations and Revocations; General

Sec.

2370.0-1 Purpose.
2370.0-3 Authority.

Subpart 2372—Procedures

2372.1 Notice of intention to relinquish action by holding agency.
2372.2 Report to General Services Administration.
2372.3 Return of lands to the public domain; conditions.

Subpart 2374—Acceptance of Jurisdiction by BLM

2374.1 Property determinations.
2374.2 Conditions of acceptance by BLM.

AUTHORITY: 63 Stat. 377 as amended, R.S. 2478; 40 U.S.C. 472, 43 U.S.C. 1201.

Subpart 2370—Restorations and Revocations; General

§ 2370.0-1 Purpose.

The regulations of this part 2370 apply to lands and interests in lands withdrawn or reserved from the public domain, except lands reserved or dedicated for national forest or national park purposes, which are no longer needed by the agency for which the lands are withdrawn or reserved.

[35 FR 9558, June 13, 1970]

§ 2370.0-3 Authority.

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, governs the disposal of surplus Federal lands or interests in lands. Section 3 of that Act (40 U.S.C. 472), as amended, February 28, 1958 (72 Stat. 29), excepts from its provisions the following:

(a) The public domain.

(b) Lands reserved or dedicated for national forest or national park purposes.

(c) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws.

(d) Lands withdrawn or reserved from the public domain, but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of the General Services Administration, determines are not suitable for return to the public domain for disposition under the general public-land laws, because such lands are substantially changed in character by improvements or otherwise.

[35 FR 9558, June 13, 1970]

Subpart 2372—Procedures

SOURCE: 35 FR 9558, June 13, 1970, unless otherwise noted.

§ 2372.1 Notice of intention to relinquish action by holding agency.

(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper office (see § 1821.2-1 of this chapter).

(b) No specific form of notice is required, but all notices must contain the following information:

(1) Name and address of the holding agency.

(2) Citation of the order which withdrew or reserved the lands for the holding agency.

(3) Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them.

(4) Description of the improvements existing on the lands.

(5) The extent to which the lands are contaminated and the nature of the contamination.

(6) The extent to which the lands have been decontaminated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures.

(7) The extent to which the lands have been changed in character other than by construction of improvements.

(8) The extent to which the lands or resources thereon have been disturbed

and the measures taken or proposed to be taken to recondition the property.

(9) If improvements on the lands have been abandoned, a certification that the holding agency has exhausted General Services Administration procedures for their disposal and that the improvements are without value.

(10) A description of the easements or other rights and privileges which the holding agency or its predecessors have granted covering the lands.

(11) A list of the terms and conditions, if any, which the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest.

(12) Any information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it.

(13) Recommendations as to the further disposition of the lands, including where appropriate, disposition by the General Services Administration.

§ 2372.2 Report to General Services Administration.

The holding agency will send one copy of its report on unneeded lands to the appropriate regional office of the General Services Administration for its information.

§ 2372.3 Return of lands to the public domain; conditions.

(a) When the authorized officer of the Bureau of Land Management determines the holding agency has complied with the regulations of this part, including the conditions specified in § 2374.2 of this subpart, and that the lands or interests in lands are suitable for return to the public domain for disposition under the general public land laws, he will notify the holding agency that the Department of the Interior accepts accountability and responsibility for the property, sending a copy of this notice to the appropriate regional office of the General Services Administration.

(b) [Reserved]

Subpart 2374—Acceptance of Jurisdiction by BLM

§ 2374.1 Property determinations.

(a) When the authorized officer of the Bureau of Land Management determines that the holding agency has complied with the regulations of this part and that the lands or interests in lands other than minerals are not suitable for return to the public domain for disposition under the general public land laws, because the lands are substantially changed in character by improvements or otherwise, he will request the appropriate officer of the General Services Administration, or its delegate, to concur in his determination.

(b) When the authorized officer of the Bureau of Land Management determines that minerals in lands subject to the provisions of paragraph (a) of this section are not suitable for disposition under the public land mining or mineral leasing laws, he will notify the appropriate officer of the General Services Administration or its delegate of this determination.

(c) Upon receipt of the concurrence specified in paragraph (a) of this section, the authorized officer of the Bureau of Land Management will notify the holding agency to report as excess property the lands and improvements therein, or interests in lands to the General Services Administration pursuant to the regulations of that Administration. The authorized officer of the Bureau of Land Management will request the holding agency to include minerals in its report to the General Services Administration only when the provisions of paragraph (b) of this section apply. He will also submit to the holding agency, for transmittal with its report to the General Services Administration, information of record in the Bureau of Land Management on the claims, if any, by agencies other than the holding agency of primary, joint, or secondary jurisdiction over the lands and on any encumbrances under the public land laws.

[35 FR 9559, June 13, 1970]

§ 2374.2 Conditions of acceptance by BLM.

Agencies will not be discharged of their accountability and responsibility under this section unless and until:

(a) The lands have been decontaminated of all dangerous materials and have been restored to suitable condition or, if it is uneconomical to decontaminate or restore them, the holding agency posts them and installs protective devices and agrees to maintain the notices and devices.

(b) To the extent deemed necessary by the authorized officer of the Bureau of Land Management, the holding agency has undertaken or agrees to undertake or to have undertaken appropriate land treatment measures correcting, arresting, or preventing deterioration of the land and resources thereof which has resulted or may result from the agency's use or possession of the lands.

(c) The holding agency, in respect to improvements which are of no value, has exhausted General Services Administration's procedures for their disposal and certifies that they are of no value.

(d) The holding agency has resolved, through a final grant or denial, all commitments to third parties relative to rights and privileges in and to the lands or interests therein.

(e) The holding agency has submitted to the appropriate office mentioned in paragraph (a) of § 2372.1 a copy of, or the case file on, easements, leases, or other encumbrances with which the holding agency or its predecessors have burdened the lands or interests therein.

[35 FR 9559, June 13, 1970]

Group 2400—Land Classification

PART 2400—LAND CLASSIFICATION

Subpart 2400—Land Classification; General

Sec.
2400.0-2 Objectives.
2400.0-3 Authority.
2400.0-4 Responsibility.
2400.0-5 Definitions.

Source: 35 FR 9559, June 13, 1970, unless otherwise noted.

Subpart 2400—Land Classification; General

§ 2400.0-2 Objectives.

The statutes cited in § 2400.0-3 authorize the Secretary of the Interior to classify or otherwise take appropriate steps looking to the disposition of public lands and on an interim basis, to classify public lands for retention and management, subject to requirements of the applicable statutes. In addition to any requirements of law, it is the policy of the Secretary (a) to specify those criteria which will be considered in the exercise of his authority and (b) to establish procedures which will permit the prompt and efficient exercise of his authority with, as far as is practicable, the knowledge and participation of the interested parties, including the general public. Nothing in these regulations is meant to affect applicable State laws governing the appropriation and use of water, regulation of hunting and fishing or exercise of any police power of the State.

§ 2400.0-3 Authority.

(a) All vacant public lands, except those in Alaska, have been, with certain exceptions, withdrawn from entry, selection, and location under the nonmineral land laws by Executive Order 6910, of November 26, 1934, and Executive Order 6964 of February 5, 1935, and amendments thereto, and by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315). Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify and open to entry, selection, or location under applicable law any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto, or within a grazing district established under that act which he finds are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lieu, exchange, or scrip rights or land grant. Classification under section 7 is a prerequisite to the approval of all entries, selections, or locations under the following subparts of this chapter, except as they apply to Alaska and with certain other exceptions: Original, Additional, Second, and Adjoining Farm Homesteads—subparts 2511, 2512, and 2513; Enlarged Homestead—subpart 2514; Indian Allotments—part 2530; Desert Land Entries—part 2520; Recreation and Public Purposes Act—part 2740 and subpart 2912; State Grants for Educational, Institutional, and Park Purposes—part 2620; Scrip Selections—part 2610 and Exchanges for the Consolidation or Extension of National Forests, Indian Reservations or Indian Holdings—Group 2200.

(b) Section 8(b) of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315g), authorizes the Secretary of the Interior, when public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district established under that act and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the base lands. The regulations governing such exchanges are contained in Group 2200 of this chapter.

(c) Section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), authorizes the Secretary of the Interior in his discretion to order into market and sell at public auction isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not exceeding 760 acres the greater part of which are mountainous or too rough for cultivation. The regulations governing such sales are contained in part 2710 of this chapter.

(d) Section 3 of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181c), authorizes the Secretary of the Interior to classify, either on application or otherwise, and restore to homestead entry, or purchase under the provisions of section 2455 of the Revised Statutes, as amended, any of the revested Oregon and California Railroad or reconveyed Coos Bay Wagon Road grant land which, in his judgment, is more suitable for agricultural use than for afforestation, reforestation, stream-flow protection, recreation, or other public purposes. The regulations governing disposal under this act are contained in part 2710 of this chapter.

(e) The Small Tract Act of June 1, 1938 (52 Stat. 609), as amended (43 U.S.C. 682a-e), authorizes the Secretary of the Interior, in his discretion, to lease or sell certain classes of public lands which he classifies as chiefly valuable for residence, recreation, business or community site purposes. The regulations governing leases and sales under this act are contained in part 2730 and subpart 2913 of this chapter.

(f) The Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended (43 U.S.C. 869-869-4), requires the Secretary of the Interior, in the exercise of his discretion to make a determination that land is to be used for an established or definitely proposed project, and in the case of Alaska authorizes him to classify certain classes of public lands for lease or sale for recreation or other public purposes. The regulations governing lease and sale of land under this act are contained in part 2740 and subpart 2912 of this chapter.

(g) The Act of July 31, 1939 (53 Stat. 1144), authorizes and empowers the Secretary of the Interior, in the administration of the Act of August 28, 1937 (supra), in his discretion, to exchange any land formerly granted to the Oregon & California Railroad Co., title to which was revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218), and any land granted to the State of Oregon, title to which was reconveyed to the United States by the Southern Oregon Co. pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, State, or county ownership, either within or contiguous to the former limits of such grants, when by such action the Secretary of the Interior will be enabled to consolidate advantageously the holdings of lands of the United States. The regulations governing exchanges under this act are contained in part 2260 of this chapter.

(h) The Alaska Public Sales Act of August 30, 1949 (63 Stat. 679), as amended (48 U.S.C. 364a-f), authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands in Alaska for public sale for industrial or commercial purposes. The regulations governing sales of land under this act are contained in part 2770 of this chapter.

(i) The Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421-27), authorizes and directs the Secretary of the Interior to sell public lands in tracts not exceeding 5,120 acres, that have been classified for sale in accordance with a determination that (1) the lands are required for the orderly growth and development of a community or (2) the lands are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development. The regulations governing such sales are contained in part 2720 of this chapter.

(j) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411-18), authorizes the Secretary of the Interior to determine which of the public lands (and other Federal lands), including those situated in the State of Alaska exclusively administered by him through the Bureau of Land Management shall be (1) sold because they are (i) required for the orderly growth and development of a community or (ii) are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development or (2) retained, at least for the time being, in Federal ownership and managed for (i) domestic livestock grazing, (ii) fish and wildlife development and utilization, (iii) industrial development, (iv) mineral production, (v) occupancy, (vi) outdoor recreation, (vii) timber production, (viii) watershed protection, (ix) wilderness preservation, or (x) preservation of public values that would be lost if the land passed from Federal ownership.

§ 2400.0-4 Responsibility.

(a) Except where specified to the contrary in this group, the authority of the Secretary of the Interior to classify lands and make other determinations in accordance with the regulations of this part has been delegated to persons authorized to act in his name; to the Director, Bureau of Land Management and persons authorized to act in his name; to State Directors of the Bureau of Land Management and to any person authorized to act in the name of a State Director.

(b) Classifications and other determinations in accordance with the regulations of this group may be made by the authorized officer whether or not applications or petitions have been filed for the lands.

§ 2400.0-5 Definitions.

As used in the regulations of this group—

(a) *Residential* refers to single or multi-family dwellings or combinations thereof, and related community facilities, both seasonal and yearround.

(b) *Commercial* refers to the sale, exchange, or distribution of goods and services.

(c) *Industrial* refers to the manufacture, processing, and testing of goods and materials, including the production of power. It does not refer to the growing of agricultural crops, or the raising of livestock, or the extraction or severance of raw materials from the land being classified, but it does include activities incidental thereto.

(d) *Agricultural* refers to the growing of cultivated crops.

(e) *Community* refers to a village, town or city, or similar subdivision of a State, whether or not incorporated.

(f) *Domestic livestock* refers to cattle, horses, sheep, goats and other grazing animals owned by livestock operators, provided such operators meet the qualification set forth in § 4111.1-1 or § 4131.1-3 of this chapter. This definition includes animals raised for commercial purposes and also *domestic livestock* within the meaning of § 4111.3-1(d)(1) of this chapter.

(g) *Fish and wildlife* refers to game, fish and other wild animals native or adaptable to the public lands and waters.

(h) *Mineral* refers to any substance that (1) is recognized as mineral, according to its chemical composition, by the standard authorities on the subject, or (2) is classified as mineral product in trade or commerce, or (3) possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts.

(i) *Occupancy* refers to use of lands as a site for any type of useful structure whatsoever.

(j) *Outdoor recreation* includes, but is not limited to, hunting, fishing, trapping, photography, horseback riding, picnicking, hiking, camping, swimming, boating, rock and mineral collecting, sightseeing, mountain climbing, and skiing.

(k) *Timber production* refers to the growth of trees in forests and woodlands.

(l) *Watershed protection* refers to maintenance of the stability of soil and soil cover and the control of the natural flow of water.

(m) *Wilderness* refers to areas in a native condition or reverted to a native condition, substantially free of man-made structures and human habitation.

(n) *Public value* refers to an asset held by, or a service performed for, or a benefit accruing to the people at large.

(o) *Multiple use* means the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(p) *Sustained yield of the several products and services* means the achievement and maintenance of a high-level annual or regular periodic output of the various renewable resources of land without impairment of the productivity of the land.

PART 2410—CRITERIA FOR ALL LAND CLASSIFICATIONS

Subpart 2410—General Criteria

§ 2410.1 All classifications.

All classifications under the regulations of this part will give due consideration to ecology, priorities of use, and the relative values of the various resources in particular areas. They must be consistent with all the following criteria:

(a) The lands must be physically suitable or adaptable to the uses or purposes for which they are classified. In addition, they must have such physical and other characteristics as the law may require them to have to qualify for a particular classification.

(b) All present and potential uses and users of the lands will be taken into consideration. All other things being equal, land classifications will attempt to achieve maximum future uses and minimum disturbance to or dislocation of existing users.

(c) All land classifications must be consistent with State and local government programs, plans, zoning, and regulations applicable to the area in which the lands to be classified are located, to the extent such State and local programs, plans, zoning, and regulations are not inconsistent with Federal programs, policies, and uses, and will not lead to inequities among private individuals.

(d) All land classifications must be consistent with Federal programs and policies, to the extent that those programs and policies affect the use or disposal of the public lands.

[35 FR 9560, June 13, 1970]

§ 2410.2 Relative value, disposal or retention.

When, under the criteria of this part, a tract of land has potential for either retention for multiple use management or for some form of disposal, or for more than one form of disposal, the relative scarcity of the values involved and the availability of alternative means and sites for realization of those values will be considered. Long-term public benefits will be weighed against more immediate or local benefits. The tract will then be classified in a manner which will best promote the public interests.

[35 FR 9560, June 13, 1970]

PART 2420—MULTIPLE-USE MANAGEMENT CLASSIFICATIONS

Subpart 2420—Criteria for Multiple-Use Management Classifications

§ 2420.1 Use of criteria.

In addition to the general criteria in subpart 2410, the following criteria will be used to determine whether public lands will be retained, in Federal ownership and managed for domestic livestock grazing, fish and wildlife development and utilization, industrial development, mineral production, occupancy, outdoor recreation, timber production, watershed protection, wilderness preservation, or preservation of public values that would be lost if the land passed from Federal ownership.

[35 FR 9561, June 13, 1970]

§ 2420.2 Criteria.

Lands may be classified for retention under the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411-18), if they are not suitable for disposal under the criteria set forth in part 2430 and such classification will do one or more of the following:

(a) Assist in effective and economical administration of the public lands in furtherance of the several objectives of such administration as expressed in the various public land laws.

(b) Further the objectives of Federal natural resource legislation directed, among other things towards:

(1) Stabilization and development of the livestock industry dependent upon Federal lands, such as sections 1 and 15 of the Taylor Grazing Act (43 U.S.C. 315 and 315m), and the Alaska Grazing Act (48 U.S.C. 471-471o).

(2) Provision or preservation of adequate areas of public hunting and fishing grounds and public access thereto, and maintenance of habitat and food supplies for the fish and wildlife dependent upon the public lands and maintained under Federal and State programs, such as section 9 of the Taylor Grazing Act (43 U.S.C. 315h) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c).

(3) Fostering the economy of the nation by industrial and mineral development, such as through the materials sales and mineral leasing laws (Group 3000 of this chapter) and the rights-of-way laws (Group 2800 of this chapter).

(4) Realization of the beneficial utilization of the public lands through occupancy leases, such as under the Recreation and Public Purposes Act (43 U.S.C. 869-869-4) and the Small Tract Act (43 U.S.C. 682a-682e).

(5) Provision of needed recreation, conservation, and scenic areas and open space (42 U.S.C. 1500-1500e) and assurance of adequate outdoor recreation resources for present and future generations of Americans (16 U.S.C. 460-1 *et seq.*).

(6) Stabilization of the timber industry and dependent communities and sustained-yield production of timber and other forest products, such as the Materials Sales Act (30 U.S.C. 601-604), and, in connection with management of other Federal lands, the O and C Act (43 U.S.C. 1181a-1181f, 1181g-1181j).

(7) Protection of frail lands, conservation of productive soils and water supplies, and prevention of damage and loss due to excessive runoff, flooding, salination, and siltation, such as the Soil and Moisture Conservation Act (16 U.S.C. 590a *et seq.*) and section 2 of the Taylor Grazing Act (43 U.S.C. 315a).

(c) Preservation of public values that would be lost if the land passed from Federal ownership (43 U.S.C. 1411-1418) such as where

(1) The lands are needed to protect or enhance established Federal programs, by such means as provision of buffer zones, control of access, maintenance of water supplies, reduction and prevention of water pollution, exclusion of nonconforming inholdings, maintenance of efficient management areas, provision of research areas, and maintenance of military areas or sites for other government activities.

(2) The lands should be retained in Federal ownership pending enactment of Federal legislation, which would affect them.

(3) The lands should be retained in Federal ownership pending their acquisition by a State or local government.

(4) The lands are best suited for multiple use management and require management for a mixture of uses in order to best benefit the general public and such management could not be achieved if the lands were in private ownership.

(5) The lands contain scientific, scenic, historic, or wilderness values which would be lost to the general public if they were transferred out of Federal ownership.

(6) Transfer of the lands would be inconsistent with national objectives for the preservation of natural beauty of the country and the proper utilization of open space.

[35 FR 9561, June 13, 1970]

PART 2430—DISPOSAL CLASSIFICATIONS

Subpart 2430—Criteria for Disposal Classifications

Sec.

2430.1 Use of criteria.
2430.2 General criteria for disposal classification.
2430.3 Additional criteria for classification of lands needed for urban or suburban purposes.
2430.4 Additional criteria for classification of lands valuable for public purposes.
2430.5 Additional criteria for classification of lands valuable for residential, commercial, agricultural, or industrial purposes.
2430.6 Additional criteria for lands valuable for other purposes.

Source: 35 FR 9561, June 13, 1970, unless otherwise noted.

Subpart 2430—Criteria for Disposal Classifications

§ 2430.1 Use of criteria.

In addition to the general criteria in subpart 2410 the following criteria will govern classifications under the authorities listed in § 2400.0-3 for sale, selection, grant or other disposal under the Public Land Sale Act (78 Stat. 988, 43 U.S.C. 1421-1427) and other laws authorizing the Secretary of the Interior to dispose of public lands. The criteria are set forth in terms of land use classes. Where appropriate, the applicability of specific disposal laws to lands in each use class is discussed.

§ 2430.2 General criteria for disposal classification.

The general approach to determine the act under which lands are to be classified and disposed of is as follows:

(a) Consideration under criteria listed in this part will first be given to whether the lands can be classified for retention for multiple use management, for disposal, or for both. If, under these criteria, they could be classified for both, the principles of § 2410.2 will be applied.

(b) If the lands are found to be suitable for disposal, consideration under the criteria of this part will be given to whether the lands are needed for urban or suburban purposes or whether they are chiefly valuable for other purposes. Lands found to be valuable for public purposes will be considered chiefly valuable for public purposes, except in situations where alternate sites are available to meet the public needs involved.

§ 2430.3 Additional criteria for classification of lands needed for urban or suburban purposes.

(a) To be needed for urban or suburban purposes it must be anticipated that a community will embrace the lands within 15 years.

(b) Lands determined to be needed for urban or suburban purposes may be classified for sale pursuant to the Public Land Sale Act as being required for the orderly growth and development of a community, if (1) adequate zoning regulations are in effect and (2) adequate local governmental comprehensive plans have been adopted.

(c) Lands determined to be needed for urban or suburban purposes may be classified for disposal under any appropriate law other than the Public Land Sale Act, if disposal under such other authority would be consistent with local comprehensive plans, or in the absence of such plans, with the views of local governmental authorities.

(d) Where more than one form of disposal is possible, the authorized officer will select that course of action which will best promote development of the land for urban or suburban purposes.

§ 2430.4 Additional criteria for classification of lands valuable for public purposes.

(a) To be valuable for public purposes, lands must be suitable for use by a State or local governmental entity or agency for some noncommercial and nonindustrial governmental program or suitable for transfer to a non-Federal interest in a transaction which will benefit a Federal, State, or local governmental program.

(b) Lands found to be valuable for public purposes may be classified for sale pursuant to the Public Land Sale Act as chiefly valuable for public uses or development or for transfer in satisfaction of a State land grant, or for transfer to a State or local governmental agency in exchange for other property, or for transfer to a governmental agency under any applicable act of Congress other than the Recreation and Public Purposes Act (44 Stat. 741), as amended (43 U.S.C. 869-869-4), if (1) the proposed use includes profit activities or if the interested, qualified governmental agency and the authorized officer agree that there is no need for the perpetual dedication of the lands to public uses required by the Recreation and Public Purposes Act, and (2) in the case of sales under the Public Land Sale Act, adequate zoning regulations exist in the area in which the lands are located.

(c) Lands found to be valuable for public purposes will ordinarily be classified for sale or lease under the Recreation and Public Purposes Act (see part 2740 and subpart 2912 of this chapter) if the proposed use involves nonprofit activities and if it is determined by the authorized officer that the provisions of that Act are required to insure the continued dedication of the lands to such uses, or otherwise to carry out the purposes of the Act.

(d) Lands may be classified for exchange under appropriate authority where they are found to be chiefly valuable for public purposes because they have special values, arising from the interest of exchange proponents, for exchange for other lands which are needed for the support of a Federal program.

§ 2430.5 Additional criteria for classification of lands valuable for residential, commercial, agricultural, or industrial purposes.

(a) Lands which have value for residential, commercial, agricultural, or industrial purposes, or for more than one of such purposes, will be considered chiefly valuable for that purpose which represents the *highest and best use* of the lands, i.e., their most profitable legal use in private ownership.

(b) Lands may be classified for sale pursuant to the Public Land Sale Act as being chiefly valuable for residential, commercial, agricultural, or industrial uses or development (other than grazing use or use for raising native forage crops), if (1) adequate zoning regulations are in effect, and, where the lands also are needed for urban or suburban development, (2) adequate local governmental comprehensive plans have been adopted.

(c) Lands determined to be valuable for residential, commercial, agricultural, or industrial purposes may be classified for disposal under any appropriate authority other than the Public Land Sale Act if (1) disposal under such other authority would be consistent with local governmental comprehensive plans, or (2) in the absence of such plans, with the views of local governmental authorities.

(d) Lands outside of Alaska may be classified as suitable for homestead entry under part 2510 of this chapter if they are (1) chiefly valuable for agricultural purposes, and (2) suitable for development as a home and farm for a man and his family, and (3) the anticipated return from agricultural use of the land would support the residents. If it is determined that the irrigation of land otherwise suitable for homestead entry would endanger the supply of adequate water for existing users or cause the dissipation of water reserves, such land will not be classified for entry. Land may be classified for homestead entry only if rainfall is adequate, or if under State law, there is available to the land sufficient irrigation water, to permit agricultural development of its cultivable portions.

(e) Lands may be classified as suitable for desert land entry under part 2520 of this chapter if (1) the lands are chiefly valuable for agricultural purposes, and (2) all provisions concerning irrigation water set forth in § 2430.5(d) are met.

(f) Lands outside of Alaska may be classified as suitable for Indian allotment under part 2530 of this chapter if (1) the lands are valuable for agricultural purposes, and (2) the lands are on the whole suitable for a home for an Indian and his family, and (3) the anticipated return from agricultural use of the land would support the residents, and (4) the requirements for water supplies set forth in § 2430.5(d) are met.

(g) Lands determined to be valuable for purposes other than public purposes may be determined to be suitable for exchange if the acquisition of the offered lands, the disposition of the public lands, and the anticipated costs of consummating the exchange will not disrupt governmental operations.

§ 2430.6 Additional criteria for lands valuable for other purposes.

Lands may be classified for disposal under any applicable authority where they are found to be chiefly valuable for purposes other than those described in §§ 2430.2-2430.5 of this section and to be not suitable for retention for multiple use management.

PART 2440—SEGREGATION BY CLASSIFICATION

Subpart 2440—Criteria for Segregation

Sec.
2440.1 Use of criteria.
2440.2 General criterion.
2440.3 Specific criteria for segregative effect of classification for retention.
2440.4 Specific criteria for segregative effect of classification for disposal.

SOURCE: 35 FR 9562, June 13, 1970, unless otherwise noted.

Subpart 2440—Criteria for Segregation

§ 2440.1 Use of criteria.

The following criteria will govern the determination of the extent to which classifications and proposed classifications will segregate the affected lands from settlement, location, sale, selection, entry, lease, or other forms of disposal under the public land laws, including the mining and mineral leasing laws. The segregative effect of each classification or proposed classification will be governed by applicable laws and regulations, and will be stated in the classification notice or decision.

§ 2440.2 General criterion.

The public lands classified or proposed to be classified under the regulations of this part will be kept open to (i.e., not segregated from) as many forms of disposal as possible consistent with the purposes of the classification and the resource values of the lands.

§ 2440.3 Specific criteria for segregative effect of classification for retention.

(a) Public lands classified or proposed to be classified for retention for multiple-use management will be segregated from those forms of disposal which, if the lands remain open thereto, could:

(1) Interfere significantly with the management of the lands under principles of multiple use and sustained yield, or

(2) Impair or prevent, to an appreciable extent, realization of public values in the lands, or

(3) Impair or prevent, to an appreciable extent, realization of the objectives of retention and management set forth in part 2420, or

(4) Lead to unnecessary expenditures of public or private funds arising out of individual efforts to acquire public lands under laws, which are in fact not applicable, because of the nature of the resources of the lands.

(b) In applying the criteria in paragraph (b)(1) of this section, land shall not be closed to mining location unless the nonmineral uses would be inconsistent with and of greater importance to the public interest than the continued search for a deposit of valuable minerals.

§ 2440.4 Specific criteria for segregative effect of classification for disposal.

Public lands classified or proposed to be classified for disposal will be segregated from those forms of disposal which, if the lands remained open thereto, could interfere with the orderly disposal of the lands pursuant to appropriate law. Public lands classified or proposed to be classified for sale under the Public Land Sale Act (78 Stat. 988, 43 U.S.C. 1411-18) will be segregated from all forms of disposal under the mining and mineral leasing laws.

PART 2450—PETITION-APPLICATION CLASSIFICATION SYSTEM

Subpart 2450—Petition-Application Procedures

Sec.
2450.1 Filing of petition.
2450.2 Preliminary determination.
2450.3 Proposed classification decision.
2450.4 Protests: Initial classification decision.
2450.5 Administrative review.
2450.6 Effect of final order.
2450.7 Right to occupy or settle.
2450.8 Preference right of petitioner-applicant.

Source: 35 FR 9563, June 13, 1970, unless otherwise noted.

Subpart 2450—Petition-Application Procedures

§ 2450.1 Filing of petition.

(a) When (1) land must be classified or designated pursuant to the authorities cited in § 2400.0-3 before an application may be approved and (2) the filing of applications is permitted prior to classification, the application together with a petition for classification on a form approved by the Director (hereinafter referred to collectively as a *petition-application*) must be filed in accordance with the provisions of § 1821.2 of this chapter. Lists indicating the proper office for filing of applications may be obtained from the Director or any other officer of the Bureau of Land Management. Copies of the petition for classification form and the application forms may be obtained from the proper offices or from the Bureau of Land Management, Washington, DC 20240.

§ 2450.2 Preliminary determination.

Upon the filing of a petition-application, the authorized officer shall make a preliminary determination as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to investigate and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition-application has been filed.

§ 2450.3 Proposed classification decision.

(a) The State Director shall make and issue a proposed classification decision which shall contain a statement of reasons in support thereof. Such decisions shall be served upon (1) each petitioner-applicant for the land, (2) any grazing permittee, licensee, or lessee on the land, or his representative, (3) the District Advisory Board, (4) the local governing board, planning commission, State coordinating committee, or other official or quasi-official body having jurisdiction over zoning in the geographic area within which the lands are located, and (5) any governmental officials or agencies from whom the record discloses comments on the classification have been received. If the decision affects more than 2,560 acres and would lead to the disposal of the lands, the decision will also be published in accordance with the provisions of subpart 2462.

(b) When there are multiple petition-applications for the same land, the proposed classification decision shall state which petition-application, if any, will be entitled to preference under applicable law; or where no petition-application has been filed for the purpose for which the land is proposed to be classified, the decision shall so state.

(1) When multiple petition-applications have been filed for the same land, the one first filed for the purpose for which the land is classified will be entitled to preference under applicable law.

(2) When two or more petition-applications have been simultaneously filed for the purpose for which the land is classified, the petition-application entitled to preference will be the first to be selected by drawing.

(3) If no petition-application has been filed for the purpose for which it is proposed to classify the land, the proposed decision shall state that the land will be opened to application by all qualified individuals on an equal-opportunity basis after public notice.

§ 2450.4 Protests: Initial classification decision.

(a) For a period of 30 days after the proposed classification decision has been served upon the parties listed in § 2450.3(a), protests thereto may be filed by an interested party with the State Director. No particular form of protest is required under this subparagraph, it being the intent of this procedure to afford the State Director the opportunity to review the proposed classification decision in the light of such protests.

(b) If no protests are filed within the time allowed, the proposed classification action shall be issued as the initial classification decision of the State Director, and shall be served on the petitioner-applicants and upon grazing permittees, licensees, or lessees.

(c) If protests are timely filed, they shall be reviewed by the State Director, who may require statements or affidavits, take testimony, or conduct further field investigations as are deemed necessary to establish the facts. At the conclusion of such review, the State Director shall issue an initial classification decision, either revised or as originally proposed, which shall be served on all interested parties.

§ 2450.5 Administrative review.

(a) For a period of 30 days after service thereof upon all parties in interest, the initial classification decision of the State Director shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review.

(b) If, 30 days from receipt by parties in interest of the initial decision of the State Director, the Secretary has not either on his own motion, or motion of any protestant, petitioner-applicant, or the State Director, exercised supervisory authority for review, the initial classification decision shall become the final order of the Secretary.

(c) The exercise of supervisory authority by the Secretary shall automatically vacate the initial classification decision and the final Departmental decision shall be issued by the Secretary of the Interior and served upon all parties in interest.

(d) No petitioner-applicant or protestant to a proposed classification decision of a State Director to whom the provisions of this section are applicable shall be entitled to any administrative review other than that provided by this section or to appeal under provisions of parts 1840 and 1850 of this chapter.

§ 2450.6 Effect of final order.

(a) A final order of the Secretary shall continue in full force and effect so long as the lands remain subject to classification under the authorities cited in subpart 2400 until an authorized officer revokes or modifies it. Until it is so revoked or modified, all applications and petition-applications for the lands not consistent with the classification of the lands will not be allowed. Any payments submitted therewith will be returned. If the order is revoked or modified, the land will be opened to entry on an equal-opportunity basis after public notice in accordance with applicable regulations for the purpose for which it may be classified.

(b) Nothing in this section, however, shall prevent the Secretary of the Interior, personally and not through a delegate, from vacating or modifying a final order of the Secretary. In the event that the Secretary vacates or modifies a final order within sixty days of the date it became final, any preference right of a petitioner-applicant will be restored.

§ 2450.7 Right to occupy or settle.

The filing of a petition-application gives no right to occupy or settle upon the land. A person shall be entitled to the possession and use of land only after his entry, selection, or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass.

§ 2450.8 Preference right of petitioner-applicant.

Where public land is classified for entry under section 7 of the Taylor Grazing Act or under the Small Tract Act pursuant to a petition-application filed under this part, the petitioner-applicant is entitled to a preference right of entry, if qualified. If, however, it should be necessary thereafter for any reason to reject the application of the preference right claimant, the next petitioner-applicant in order of filing shall succeed to the preference right. If there is no other petitioner-applicant the land may be opened to application by all qualified individuals on an equal-opportunity basis after public notice or the classification may be revoked by the authorized officer.

PART 2460—BUREAU INITIATED CLASSIFICATION SYSTEM

Subpart 2461—Multiple-Use Classification Procedures

Sec.

2461.0-1 Purpose.
2461.1 Proposed classifications.
2261.2 Classifications.
2461.3 Administrative review.
2461.4 Changing classifications.
2461.5 Segregative effect.

Subpart 2462—Disposal Classification Procedure: Over 2,560 Acres

2462.0-3 Authority.
2462.1 Publication of notice of, and public hearings on, proposed classification.
2462.2 Publication of notice of classification.
2462.3 Administrative review.
2462.4 Segregative effect of publication.

Subpart 2461—Multiple-Use Classification Procedures

SOURCE: 35 FR 9564, June 13, 1970, unless otherwise noted.

§ 2461.0-1 Purpose.

Formal action to classify land for retention for multiple use management will be governed by the following procedures

§ 2461.1 Proposed classifications.

(a) Proposed classifications will be clearly set forth on a map by the authorized officer, and on the Land Office records.

(1) Notice of proposed classifications involving more than 2,560 acres will be, and those involving 2,560 acres or less may be, published in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected lands.

(2) Notice of the proposals will be sent to authorized users, licensees, lessees, and permittees, or their selected representatives, the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area in which the lands are located, the governor of that State, the BLM multiple use advisory board in that

State, and the District advisory board and to any other parties indicating interest in such classifications.

(3) The notice will indicate where and when the map and Land Office records may be examined. The notice will specify the general location of the lands, the acreage involved, and the extent to which the land is proposed to be segregated from settlement, location, sale, selection, entry, lease, or other form of disposal under the public land laws, including the mining and mineral leasing laws. The notice of proposed classification will specify the period during which comments will be received, which will not be less than 60 days from date of publication of the notice.

(4) The authorized officer will hold a public hearing on the proposal if (i) the proposed classification will affect more than 25,000 acres or (ii) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ 2461.2 Classifications.

Not less than 60 days after publication of the proposed classification, a classification will be made by the authorized officer, and a notice of classification published in the Federal Register and recorded in the Land Office records and on a map which will be filed in the local BLM District Office. Such map will be available for public inspection.

§ 2461.3 Administrative review.

For a period of 30 days after publication of the classification in the Federal Register, the classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior.

§ 2461.4 Changing classifications.

Classifications may be changed, using the procedures specified in this subpart.

§ 2461.5 Segregative effect.

Segregative effect of classifications and proposed classifications:

(a) Publication in the Federal Register of a notice of proposed classification pursuant to § 2461.1(a) or of a notice of classification pursuant to § 2461.2 will segregate the affecte land to the extent indicated in th notice.

(b) The segregative effect of a pr posed classification will terminate i one of the following ways:

(1) Classification of the lands withi 2 years of publication of the notice o proposed classification in the Federa Register;

(2) Publication in the Federal Register of a notice of termination of th proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year perio from the date of publication of th notice of proposed classification without continuance as prescribed by th Classification and Multiple Use Act, o expiration of an additional period, no exceeding 2 years, if the require notice of proposed continuance i given.

(c) The segregative effect of a classification for retention will terminate i one of the following ways:

(1) Reclassification of the lands fo some form of disposal;

(2) Publication in the Federal Register of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of the classification.

Subpart 2462—Disposal Classificatio Procedure: Over 2,560 Acres

Source: 35 FR 9564, June 13, 1970, unles otherwise noted.

§ 2462.0-3 Authority.

Section 2 of the Classification and Multiple Use Act of September 19 1964 (78 Stat. 986, 43 U.S.C. 1412), requires the Secretary of the Interior to take certain actions when he proposes the classification for sale or other disposal under any statute of a tract of land in excess of 2,560 acres.

§ 2462.1 Publication of notice of, and public hearings on, proposed classification.

The authorized officer shall publish a notice of his proposed classification in the Federal Register and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected land. The notice shall include the legal description of the affected land, the law or laws under which the lands would be disposed of together with such other information as the authorized officer deems pertinent. Copies of the notice will be sent to the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area within which the affected lands are located, the governor of that State and the BLM multiple use advisory board in that State, the land-use planning officer and land-use planning committees, if any, of the county, in which the affected lands are located, the authorized user or users of the lands or their selected representatives, all petitioner-applicants involved, and any other party the authorized officer determines to have an interest in the proper use of the lands. The authorized officer will hold a public hearing on the proposal if (a) the proposed classification will affect more than 25,000 acres or (b) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ 2462.2 Publication of notice of classification.

After having considered the comments received as the result of publication, the authorized officer may classify the lands any time after the expiration of 60 days following the publication of the proposed classification in the FEDERAL REGISTER. The authorized officer shall publicize the classification in the same manner as the proposed classification was publicized, indicating in the notice the differences, if any, between the proposed classification and the classification.

§ 2462.3 Administrative review.

For a period of 30 days after publication in the FEDERAL REGISTER of a notice of classification for disposal, the classification shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review. If, 30 days from date of publication, the Secretary has neither on his own motion, on motion of any protestant or the State Director exercised supervisory authority for review, the classification shall become the final order of the Secretary. The exercise of supervisory authority by the Secretary shall automatically vacate the classification and reinstate the proposed classification together with its segregative effect. In this event the final departmental decision shall be issued by the Secretary and published in the FEDERAL REGISTER.

§ 2462.4 Segregative effect of publication.

(a) Publication in the FEDERAL REGISTER of a notice of proposed classification pursuant to § 2462.1 or of a notice of classification pursuant to § 2462.2 will segregate the affected land from all forms of disposal under the public land laws, including the mining laws except the form or forms of disposal for which it is proposed to classify the lands. However, publication will not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

(b) The segregative effect of a proposed classification will terminate in one of the following ways:

(1) Classification of the lands within 2 years of publication of the notice of proposed classification in the FEDERAL REGISTER;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411-18), or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(c) The segregative effect of a classification for sale or other disposal will terminate in one of the following ways:

(1) Disposal of the lands;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of 2 years from the date of publication of the proposed classification without disposal of the land and without the notice of proposed continuance as prescribed by the Classification and Multiple Use Act; or

(5) Expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

PART 2470—POSTCLASSIFICATION ACTIONS

Subpart 2470—Opening and Allowance

§ 2470.1 Opening of lands to disposal.

After lands have been classified for disposal, the authorized officer shall, at the appropriate time, open the lands to those forms of disposal consistent with the classification.

[35 FR 9565 June 13, 1970]

§ 2470.2 Allowance and entry.

(a) After lands are classified pursuant to the regulations of this part, and opened for entry or other disposal, all the laws and regulations governing the particular kind of entry, location, selection, or other disposal must be complied with in order for title to vest or other interests to pass.

(b) After lands are classified for disposal under the regulations of this subpart, the lands shall be offered for sale or other disposal consistent with the classification. If a petitioner-applicant does not have a preference right under § 2450.8, the lands shall be opened on an equal-opportunity basis.

[35 FR 9565 June 13, 1970]

Group 2500—Disposition; Occupancy and Use

NOTE: The information collection requirements contained in parts 2520, 2530, 2540 and 2560 of Group 2500 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004—0004, 1004—1010, 1004—0011, 1004—0023, 1004—0026, 1004—0028, 1004—0029 and 1004—0069. The information is being collected to permit the authorized officer to determine whether certain petitions or applications for use and occupancy of the public lands should be granted. The information will be used to make that determination. A response is required to obtain a benefit.

[48 FR 40889, Sept. 12, 1983]

PART 2510—HOMESTEADS

Subpart 2511—Original Homesteads

Sec.
2511.0-7 Cross references.
2511.0-8 Lands subject to entry.
2511.0-9 Mortgage loans.
2511.1 Applicants.
2511.2 Initiation of claims.
2511.3 Procedures.
2511.3-1 Petitions and applications.
2511.3-2 Showing required of applicant.
2511.3-3 Payments; form of remittance; receipts; notice.
2511.3-4 Proof.
2511.3-5 Amendments; exercise of equitable powers.
2511.4 Requirements for proof.
2511.4-1 Habitable house.
2511.4-2 Residence.
2511.4-3 Cultivation.
2511.4-4 Agricultural entries of withdrawn coal lands.
2511.4-5 Noncompliance.
2511.5 Rights of widows, heirs, or devisees.
2511.5-1 On death of entryman.
2511.5-2 Heirs of contestants.

Subpart 2512—Additional Entries

2512.1 After proof; on original claim (Act of March 2, 1889).
2512.2 For land contiguous to original entry (Act of April 28, 1904, as amended).

Subpart 2513—Second Entries

2513.0-7 Cross reference.
2513.1 Former entry lost, forfeited or abandoned (Act of September 5, 1914).

AUTHORITY: 43 U.S.C. 161, 43 U.S.C. 162, 43 U.S.C. 163, 43 U.S.C. 164, 43 U.S.C. 166, 43 U.S.C. 167, 43 U.S.C. 168, 43 U.S.C. 169, 43 U.S.C. 185, 43 U.S.C. 201, 43 U.S.C. 231, 43 U.S.C. 1201.

SOURCE: 35 FR 9565, June 13, 1970, unless otherwise noted.

Subpart 2511—Original Homesteads

§ 2511.0-7 Cross references.

(a) For surveys in Alaska, and surveys and resurveys, generally, see part 9180 of this chapter.

(b) For general regulations involving applications and entries, see subpart 1823 of this chapter. For proofs, see subpart 1824 of this chapter. For railroad grants see subpart 2630 of this chapter.

(c) For equitable adjudication, see subpart 1870 of this chapter.

(d) For desert-land entries, see subpart 2520 of this chapter.

(e) For soldiers' and sailors' homestead and preference rights, see subpart 2096 of this chapter.

(f) For proofs, see subpart 1824 of this chapter.

(g) For agricultural entries on mineral lands, see subpart 2093 of this chapter.

(h) For enlarged homesteads, see subpart 2514.

§ 2511.0-8 Lands subject to entry.

The laws relating to homesteads provide that homestead entry may be made on unappropriated surveyed public lands which are adaptable to agricultural use, with the following exceptions:

(a) Public lands are not subject to homestead entry if they are mineral or saline in character. However, public lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, or asphaltic minerals may be subject to homestead entry if the requirements of subpart 2093 of this chapter are met.

(b) Public lands are not subject to homestead entry if they are occupied for purposes of trade or business.

(c) Public lands are not subject to homestead entry if they are within the limits of any withdrawal, reservation, or incorporated town or city. However, public lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, as amended, or Executive Order 6964 of February 5, 1935, as amended, or by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315), are subject to homestead entry if they are so classified pursuant to Group 2400 of this chapter.

§ 2511.0-9 Mortgage loans.

(a) *Mortgage loans on existing homestead entries.* (1) A homestead entryman desiring a loan on an existing homestead entry under the Act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b) should consult the Farmers Home Corporation of the Department of Agriculture.

(2) Where a homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the Act of October 19, 1949, and such land becomes subject to homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished by an applicant who is qualified for an initial loan and who has not exercised his homestead rights. An applicant for such land must first consult the Farmers Home Corporation. Such a homestead application must not be filed in the land office until the applicant has been selected and directed to do so by the Farmers Home Corporation.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed the arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(5) If the land in a relinquished or canceled homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from

the date the canceled homestead entry was closed, the land will become subject to sale by the Farmers Home Corporation.

(b) *Mortgage loans on enlarged homesteads.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the Act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b), should proceed in accordance with paragraph (a) of this section.

(c) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

§ 2511.1 Applicants.

(a) *Examination of land.* (1) Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

(2) As each applicant is required to state that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the statement that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

(b) *Qualifications and disqualifications.* Homestead entries may be made by any person who does not come within any one of the following classes:

(1) Married women, except as stated in paragraph (c) of this section.

(2) Persons who have already made homestead entry, except as stated in subparts 2512 and 2513.

(3) Foreign-born persons who have not declared their intention to become citizens of the United States.

(4) Persons who are the owners of more than 160 acres of land in the United States.

(5) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs.

(6) Persons who have acquired title to or are claiming, under any of the agricultural public land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts, which may be allowed provided applicant's claims under the timber and stone, desert land, and preemption laws do not make up approximately 320 acres, and do not with the homestead claim aggregate more than 480 acres.

(c) *Married women.* A married woman who has all of the other qualifications of a homestead may make a homestead entry under any one of the following classes:

(1) Where she has been actually deserted by her husband.

(2) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(3) Where the husband is confined in a penitentiary and she is actually the head of the family.

(4) Where the married women is the heir of a settler or contestant who dies before making entry.

(5) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for 1 year next before the marriage and neither one abandons

the land prior to filing application for entry.

(6) The marriage of an entrywoman will not defeat her right to acquire title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife cannot maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they cannot hold both entries unless they are entitled to the benefits of the Act of April 6, 1914, as amended by the Act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167), explained in § 166.62 (38 Stat. 312, 41 Stat. 1193; 43 U.S.C. 167).

(d) *Widows.* A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

(e) *Office holders.* Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public office, the duties of which require their residence elsewhere than on the homesteads. This also applies to civil-service employees.

(f) *Insanity of entryman.* Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee. However, if the entryman regains his sanity before the expiration of 3 years after the date of the entry, he is required to reestablish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

(g) *Adjoining farm entry.* An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

§ 2511.2 Initiation of claims.

(a) *Ways in which claims may be initiated; area enterable.* (1) Claims in Alaska under homestead laws may be initiated by settlement on either surveyed or unsurveyed lands of the kind mentioned in the foregoing section. Claims may also be initiated on surveyed lands of that kind by the presentation of an application to enter.

(2) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions.

(b) *Alienation of all or part of claim; mortgages; relinquishments.* (1) The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (43 U.S.C. 174), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

(2) A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason

prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned. A mortgagee who files notice of his interest in the land office becomes entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting the land which is required to be given the original entryman or claimant.

(3) The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Department of the Interior subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes (43 U.S.C. 164), and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

(4) Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

§ 2511.3 Procedures.

§ 2511.3-1 Petitions and applications.

(a) A person who desires to enter public lands outside of Alaska must file an application together with a petition on forms approved by the Director. However, if the lands described in the application have been already classified and opened to homestead entry under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter. (See subpart 2450.)

(b) Applications for public lands in Alaska subject to entry under the regulations of this part must be filed with the proper land office on a form approved by the Director.

§ 2511.3-2 Showing required of applicant.

(a) *General requirements.* Each application to enter and the statements accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation; and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make any agreement or contract in any way or manner with any person, or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

(b) *Indian applicants*—(1) *Certificate required under Act of July 4, 1884.* (i) The authorizing officer will require an Indian homestead applicant under the Act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

(ii) When such an application is presented without this certificate the authorizing officer will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

(iii) Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said Act of July 4, 1884, is presented.

(2) *Where Indian makes entry as citizen.* If an Indian makes application under the general homestead act, the authorizing officer will allow such an Indian, if otherwise qualified, to make entry under that act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

(3) *Charges, patents.* The Act of July 4, 1884 (23 Stat. 6; 43 U.S.C. 190) expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the non-Indian homestead patent is issued on entries made under said act or the Act of March 3, 1875 (18 Stat. 420; 43 U.S.C. 189).

(c) *Settlers, widows, devisees, or heirs.* All applications by persons claiming as settlers must in addition to the facts required in paragraph (a) of this section state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens; but they are not required to state facts showing any other qualifications of a homestead entryman and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

§ 2511.3-3 Payments; form of remittance; receipts; notice.

(a) When a homesteader applies to make entry he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the Act of May 14, 1880, as amended (21 Stat. 141, 43 U.S.C. 185) must pay, as a cancellation service charge, an additional $10, which is not returnable. On all final proofs made before the authorizing officer, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof shall be accepted until all charges have been paid.

(b) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

(c) A receipt for the money tendered in connection with an application to enter is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

§ 2511.3-4 Proof.

(a) *Time for making.* (1) Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land and that the required residence and cultivation have been had. Proof must be submitted within 5 years. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

(2) Final proofs in all cases where the same are required by the general land laws or regulations of the Depart-

ment, should be taken in accordance with the published notice: *Provided, however,* That such testimony may be taken within 10 days following the time advertised in cases where accident or unavoidable delays have prevented that applicant or his witnesses from making such proof on the day specified.

(b) *Officers qualified to take proof.* Final or commutation proofs may be made before any of the officers mentioned in § 1821.3-2 of this chapter as being authorized to administer oaths.

(c) *Notice; publication.* (1) Any person desiring to make homestead proof should first forward a written notice of his desire to the authorizing officer of the proper office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

(2) The authorizing officer will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the manager. The publication must be made once a week for five consecutive weeks, in accordance with § 1824.3 of this chapter.

(3) The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The authorizing officer will be responsible for the correct preparation of the notice.

(4) On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

(d) *Who may submit proof*—(1) *General requirements.* Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in §§ 2511.1 and 2511.3-4(d)(4)(i) and 2511.5-1(a). Final proof can be made only by citizens of the United States.

(2) *Minor orphans of soldiers and sailors.* Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

(3) *When homesteaders intermarry.* (i) Where a homestead entryman or settler and a homestead entrywoman or settler intermarry after each has fulfilled the requirements of the law for 1 year, the husband (under the provisions of the Act of April 6, 1914 (38 Stat. 312) as amended by the Act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167)) may elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads.

(ii) The Act of April 6, 1914, as amended, applies to entries and settlement claims initiated before or after its date, and before or after the date of the amendatory act; to become entitled to its benefits, it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than 1 year next preceding their marriage. It is not necessary that either the husband or the wife shall have had an entry place of record before the marriage.

(iii) The law confers upon the husband the privilege of electing on which of the two entries the family shall reside. His election must be supported by the statements of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and statements be executed in duplicate; then copies of all papers must be filed in each office.

(iv) Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the marriage, and on the entries of the respective parties before that time. The Act of April 6, 1914, as amended, makes no change whatever in the requirements as to cultivation or improvements, as the case may be, or as to the necessity of having a habitable dwelling on the land; compliance with the homestead law in these regards must be shown as to each entry, precisely as though the marriage had not taken place. In no case can proof be made on a claim before an entry for the land involved shall have been duly placed on record in accordance with an approved survey.

(v) If proof be made on the entry selected as the home before title to the other is earned, residence may nevertheless be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled, and proof made, as to one of the entries prior to the marriage.

(4) *Deserted wife.* (i) The Act of October 22, 1914 (38 Stat. 766; 43 U.S.C. 170), provides where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than 1 year, she may submit proof (by way of commutation or otherwise), on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband.

(ii) Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in (d)(4)(i) of this section, and paragraph, all information in her possession as to the entryman's whereabouts, including his last known post-office address and the address near the land where he received his mail, the authorizing officer will prepare and issue a summons in substantially the following form and deliver it to the wife for service:

To [here insert name] homestead entryman:

You are hereby notified that [here insert name], claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof upon your homestead entry, serial No.——, for [here insert description of the land], to the end that patent for the land may issue in her name. This proceeding is authorized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed 30 days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof or on a date to be then fixed, offer testimony in support of such denial:

(iii) Personal service of the summons must be made if possible; such service may be made by any person over the age of 18 years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by statement of the person serving the summons, showing its delivery to the entryman. If personal service cannot be made, the summons must be sent by registered mail to the last known address of entryman and to the post office nearest the land, or to that near the land named by the wife in her preliminary statement; proof of such attempted service shall be by a statement of the person mailing the letter, to which should be attached the postmaster's receipts therefor.

(iv) Within 30 days after service of summons, the entryman may file his statement denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

(v) After the expiration of 30 days from personal service of the summons, or 40 days from the date of mailing, unless a denial by entryman be sooner filed, the authorizing officer will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

> The entryman [here insert name] is notified that, by submission of said proof, his wife [here insert name] seeks to obtain patent for the land in her own name.

(vi) If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final proof testimony will be taken in accordance with existing regulations. But the authorizing officer, for any reason deemed sufficient, may continue the hearing to a later date.

(*a*) At the hearing on the denial of desertion the entryman must pay the costs of taking the testimony.

(*b*) All hearings and subsequent proceedings shall be in accord with parts 1840 and 1850 of this chapter pertaining to contests.

(vii) If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

(e) *Citizenship requirements.* (1) When proof is submitted it must be shown that the homesteader is a citizen of the United States: *Provided, however,* That a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitled to become one (38 Stat. 740; 43 U.S.C. 168).

(2) In all cases of applications for entry or proofs in support of entries by married women otherwise duly qualified to make such entry or proof, a showing must be made of the facts concerning the marital status and citizenship in accordance with subpart 1811 of the chapter.

(3) Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when made in accordance with subpart 1811 of this chapter.

§ 2511.3-5 Amendments; exercise of equitable powers.

Applications for amendment presented pursuant to § 1821.6-5(a) will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6 and 2521.7(a) and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

§ 2511.4 Requirements for proof.

§ 2511.4-1 Habitable house.

The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

§ 2511.4-2 Residence.

(a) *For 3-year proof.* With the exception of adjoining farm homestead entries and entries allowed under certain laws not requiring residence, a homestead entryman must establish residence upon the tract entered within 6 months after date of the entry, unless an extension of time is allowed, as explained in paragraph (c) of this section and must maintain residence there for a period of 3 years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in paragraph (e)(1)(i) of this section.

(b) *For commutation proof.* (1) All original second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(2) The entryman, or his statutory successor, must show that substantially continuous residence upon the land was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house on the claim and cultivation of the area commuted to the extent required under the ordinary homestead laws, that is, cultivation of one-sixteenth of the area during the second year of the entry, and one-eighth during the third entry year and until final commutation proof. However, the proof may be accepted where actual residence on the land for the required period of 14 months is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Bureau of Land Management be fully satisfied of entryman's good faith, and provided no contest or adverse proceedings shall have been initiated for default in residence, or other good cause, prior to filing of such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions explained in § 2511.4-3(a), as to 3-year proof.

(3) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding 5 months of which he had given notices as provided by the Act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164).

(4) A person submitting commutation proof must, in addition to certain fees pay the price of the land; this is ordinarily $1.25 per acre, but is $2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(5) The claimant must show full citizenship, as in case of 3-year proof.

(6) The provisions of law explained in § 2511.4-3(b) apply to commutation proof also.

(7) Commutation proof can not be made on homestead entries allowed under the Act of April 28, 1904 (33 Stat. 547; 43 U.S.C. 224), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 *et seq.*); entries under the Enlarged Homestead Act (35 Stat. 639; 43 U.S.C. 218); entries allowed on coal lands under the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), so long as the land is withdrawn or classified as coal; additional entries allowed under the Act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213); second entries allowed under the Act of June 5, 1900 (31 Stat. 269; 43 U.S.C. 217); second entries allowed under the Act of May 22, 1902 (32 Stat. 203; 25 U.S.C. 423); when the former entry was commuted; or entries within forests under the Act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506-509).

(c) *Extension of time to establish.* (1) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence cannot be established on the land within 6 months after the date of the entry, additional time, not exceeding 6 months, may be allowed. An application for such extension must include the statements of the entryman and two witnesses acquainted with the facts. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

(2) If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first 6 months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(3) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(d) *Reduction in requirements*—(1) *Authority.* The Act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), authorizes the authorizing officer of the proper office to grant to such homesteaders as make proper showing in their applications that the climatic conditions make residence on the homestead for 7 months in each year a hardship a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years; but the total residence required need not exceed 25 months, but less than 5 of which shall be in each year and proof must be submitted within 5 years.

(2) *To 6 months in each year.* (i) An entryman desiring to avail himself of the privilege accorded by the Act of February 25, 1919, must, within 1 year after the allowance of his entry, file in the proper office an application (preferably on the approved form) corroborated by two witnesses, setting forth the climatic conditions which would render it a hardship to reside upon the land for as much as 7 months in each year, and stating whether he wishes the requirement in his case to be fixed at 6 months' residence in 4 successive years or at 5 months' residence in 5 successive years. The statement of claimant and the witnesses need not be sworn to. If the showing is satisfactory, the authorizing officer will allow it. If it is not satisfactory, he will reject the application, subject to the usual right of appeal, and all appeals will be forwarded promptly.

(ii) If the application requests a reduction to 5 months' residence in each year, the authorizing officer may, if proper, grant partial relief; that is, fix the residence period at 6 months in each year, his decision being subject to review by the Bureau of Land Management on appeal from his decision, of which the party will be notified with all promptness.

(iii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(3) *To 5 months in each year.* (i) Where a homesteader has secured a reduction of the residence requirements to 6 months in each year, he may, at or before the termination of the second year of his entry, file application for further reduction; that is, to 5 months in each of 5 years.

(ii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(4) *Conditions warranting reduction.* To entitle a homesteader to the benefits of the Act of February 25, 1919, he must show that the climatic conditions in the vicinity of the land entered are ordinarily, not in exceptional years, such as would render it a hardship for him to reside there for a greater part of each year than for 5 or for 6 months, as the case may be.

(5) *Residence each year in one continuous period.* Under this provision of the Act of February 25, 1919, there is no authority to allow two absence periods, but the 5 months' residence or the 6 months' residence, as the case may be, must be in one continuous period.

(6) *Time for making proof.* (i) Proof on an entry must be made within 5 years after its allowance, notwithstanding the fact that relief may have been granted under the Act of February 25, 1919, but the homesteader need not wait until the termination of his fifth residence year before submitting proof, provided he has had the last required period of residence.

(ii) An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the land must aggregate at least 14 months, and cultivation of not less than one-sixteenth of the area during the second year of the entry and one-eighth during the third entry year and until final commutation proof must be shown, unless a reduction has been granted in the requirements in that regard.

(7) *Credit for military service.* Credit on account of a period of military service will be allowed as on other entries, but at least 1 year's compliance with the homestead laws must be shown in every case.

(8) *Absence by settlers on unsurveyed lands.* A homestead settler on unsurveyed lands who makes the showing required by paragraphs (d)(1) to (7) of this section and who gives notice of the approximate location of the lands settled upon and claimed may be granted the benefits of the Act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), providing for prolonged absences due to climatic conditions.

(e) *Absences*—(1) *Up to 5 months.* During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as 5 months. In order to be entitled to such absences the entryman need not file applications therefor, but must each time he leaves the land file at the proper office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than 5 months and file notice of his return, he may, without any intervening residence again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

(2) *For 1 year.* (i) Leave of absence for 1 year or less may be granted by the authorizing officer of the proper office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be signed by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted cannot be counted in his favor.

(ii) All applications for leave of absence for one year or less because of failure of crops, sickness, or other unavoidable casualty must be accompanied by an application service fee of $5 which will not be returnable.

(f) *Contest.* Where a contest is initiated against an entry, prior to filing of notice to submit commutation proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended (43 U.S.C. 164, 169), and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment cannot be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the Act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 234), or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

§ 2511.4-3 Cultivation.

(a) *For 3-year proof.* (1) Cultivation of the land in a manner reasonably calculated to produce profitable results is required for a period of at least 2 years. This must consist of actual breaking of the soil, followed by planting, sowing of seed, tillage for a crop other than native grasses, and, in areas where rainfall is inadequate, the application of such amounts of water as may reasonably be required to produce a crop. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality.

(2) During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are the same as to homesteads under the general law and under the enlarged homestead acts, and the years in question begin to run, not from the establishment of residence, but from the date of the entry. The required area of cultivation may be reduced, under certain conditions, as set forth in paragraph (b) of this section. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in paragraphs (b)(1) to (3) of this section.

(b) *Reduction of requirements.* (1) The requirements as to cultivation may be reduced if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. When action is taken on an application for a reduction of the required area of cultivation, consideration will be given all the attendant facts and circumstances, and if it appears that at the date of the initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable or that there was a lack of good faith on the part of the claimant in making the entry, the application will be subject to rejection. An application for reduction must be filed at the proper office on the form prescribed therefor, and should set forth in detail the special conditions on which the claim to a reduction is based.

(2) A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice be submitted to the authorizing officer of the proper office, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

(3) No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. If lands are so heavily timbered that the entryman cannot reasonably clear and cultivate the area prescribed by the statute, such entries will be considered speculative and not made in good faith for the purpose of obtaining a home. The foregoing applies to lands containing valuable or merchantable timber and will not preclude the reduction of area of cultivation on proper showing in cases where the presence of stumps, brush, lodge pole pine, or other valueless or nonmerchantable timber prevents the clearing and cultivation of the prescribed area.

(4) Applications for reduction in area of cultivation will be acted upon by the authorizing officer of the proper office, who may in appropriate cases defer action until final proof, but his decision in granting or refusing applications for reduction in area shall be subject to review, upon appeal, by the Director, Bureau of Land Management and by the Secretary of the Interior.

(5) All applications for reduction in area of cultivation must be accompanied by an application service fee of $5 which will not be returnable.

§ 2511.4–4 Agricultural entries of withdrawn coal lands.

The Act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and the Act of June 25, 1910, was not intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the Act of March 3, 1909, and as to such lands certain nonmineral entries may be allowed, as provided for by the Act of June 22, 1910, notwithstanding their withdrawal under Act of June 25, 1910.

§ 2511.4–5 Noncompliance.

Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

§ 2511.5 Rights of widows, heirs, or devisees.

§ 2511.5–1 On death of entryman.

(a) If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, and the children if any are not all minors, then to his heirs or devisees. However, if all the heirs be minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

(b) Persons succeeding as widow, heirs, or devises to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of 3 years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived. They must in all cases show that they are citizens of the United States regardless of the question whether the entryman was himself a citizen. Moreover, the entry may not be completed by the widow, heirs, or devisee of a homestead entryman unless he himself had complied with the law in all respects to the date of his death, and they must also show, at the time of final proof, that there is a habitable house on the land.

§ 2511.5–2 Heirs of contestants.

If a contestant dies after having secured the cancellation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancelation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

Subpart 2512—Additional Entries

§ 2512.1 After proof; on original claim (Act of March 2, 1889).

(a) *Statutory authority.* Section 6 of the Act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), permits the entry, by a person otherwise qualified, who prior to the date of his application for additional entry has made homestead entry, submitted final proof thereon, and received the authorizing officer's final receipt for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land original entered by him, as shall not with it exceed a total of 160 acres.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 6 of the Act of March 2, 1889, must comply with the provisions of § 2511.3. In addition, he must file with the prescribed form or forms a reference to the Act of March 2, 1889, and a description, by number, section, township, and range of his original entry, together with the date of the issuance of the final receipt thereon. He is not required to show that he is still the owner or occupant of the land originally entered.

(c) *Residence, cultivation, and proof required.* Upon allowance of the additional entry, entrymen will be required within the period prescribed by the homestead laws and regulations to establish residence upon the land entered and to reside upon and cultivate the land for the period required by the homestead laws, and within the period prescribed by statute, to submit proof of such residence and cultivation as in other homestead cases.

[35 FR 9571, June 13, 1970]

§ 2512.2 For land contiguous to original entry (Act of April 28, 1904, as amended).

(a) *Authority.* Section 2 of the Act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), as amended by the Act of August 3, 1950 (64 Stat. 398; 43 U.S.C. 213) authorizes any person who theretofore entered, or might thereafter enter, less than 160 acres of land under the homestead laws who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional lying contiguous to the original entry which, with the land first entered and occupied will not in the aggregate exceed 160 acres. Section 3 of the Act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), prohibits the submission of commutation proof of an entry made under that act.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 2 of the Act of April 28, 1904, must comply with the provisions of § 2511.3-1. In addition, he must file with the prescribed form or forms a reference to the Act of April 28, 1904, and a description by number, section, township, and range of his original entry. He must also show that he owns and resides upon the land embraced in his original entry.

(c) *Final proof.* Before proof may be submitted as a basis for patent under the Act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry. The Act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

(d) *Cancellation of original entry.* An additional entry under the Act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

[35 FR 9572, June 13, 1970]

Subpart 2513—Second Entries

§ 2513.0-7 Cross reference.

For enlarged homesteads see subpart 2514.

[35 FR 9572, June 13, 1970]

§ 2513.1 Former entry lost, forfeited or abandoned (Act of September 5, 1914).

(a) Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) which provides that the applicant must show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries.

(b) The question whether the first entry, or entries, were made before or after the passage of the Act of September 5, 1914 is entirely immaterial. Moreover, it will be seen that the act imposes upon the Bureau of Land Management the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the Act of February 3, 1911 (36 Stat. 896) limiting its benefits to a clearly defined class of persons.

(c) In order that the Bureau of Land Management may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper land office an application to enter a specific tract) furnish his statement showing the following facts:

(1) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township and range.

(2) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(3) With reference to a homestead entry, whether he established residence upon the tract, and, if so how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and if so, how long he continued to exercise acts of ownership thereover.

(4) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(5) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(6) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

(d) The statement described in the preceding section must be signed by the applicant and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; statements of witnesses must be signed by them. Appropriate blank forms will be furnished by the authorizing officer.

[35 FR 9572, June 13, 1970]

PART 2520—DESERT-LAND ENTRIES

Subpart 2520—Desert-Land Entries: General

Sec.
2520.0-1 Purpose.
2520.0-3 Authority.
2520.0-5 Definitions.
2520.0-7 Cross references.
2520.0-8 Land subject to disposition.

Subpart 2521—Procedures

2521.1 Who may make desert-land entry.
2521.2 Petitions and applications.
2521.3 Assignment.
2521.4 When lands may be sold, taxed, or mortgaged.
2521.5 Annual proof.
2521.6 Final proof.
2521.7 Amendments.
2521.8 Contests.
2521.9 Relinquishments.

Subpart 2522—Extensions of Time To Make Final Proof

2522.1 General acts authorizing extensions of time.
2522.2 Procedure on applications for extensions of time, where contest is pending.
2522.3 Act of March 28, 1908.
2522.4 Act of April 30, 1912.
2522.5 Act of February 25, 1925.
2522.6 Service fees.

Subpart 2523—Payments

2523.1 Collection of purchase money and fees; issuance of final certificate.
2523.2 Amounts to be paid.

Subpart 2524—Desert-Land Entries Within a Reclamation Project

2524.1 Conditions excusing entrymen from compliance with the desert-land laws.
2524.2 Annual proof.
2524.3 Time extended to make final proof.
2524.4 Beginning of period for compliance with the law.
2524.5 Assignment of desert-land entries in whole or in part.
2524.6 Desert-land entryman may proceed independently of Government irrigation.
2524.7 Disposal of lands in excess of 160 acres.
2524.8 Cancellation of entries for non-payment of water-right charges.

Subpart 2520—Desert-Land Entries: General

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

SOURCE: 35 FR 9581, June 13, 1970, unless otherwise noted.

§ 2520.0-1 Purpose.

(a) It is the purpose of the statutes governing desert-land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

§ 2520.0-3 Authority.

The Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321-323) as amended by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 231, 323, 325, 327-329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

§ 2520.0-5 Definitions.

(a) As used in the desert-land laws and the regulations of this subpart:

(1) *Reclamation* requires conducting water in adequate amounts and quality to the land so as to render it available for distribution when needed for irrigation and cultivation.

(2) *Cultivation* requires the operation, practice, or act of tillage or preparation of land for seed, and keeping the ground in a state favorable for the growth of crops.

(3) *Irrigation* requires the application of water to land for the purpose of growing crops.

(4) *Crop* includes any agricultural product to which the land under consideration is generally adapted and which would return a fair reward for the expense of producing it.

(5) *Water supply*, to be adequate, must be sufficient to irrigate successfully and to reclaim all of the irrigable land embraced in an entry.

(6) *Water right* means the authority, whether by prior ownership, contract, purchase, or appropriation in accordance with state law, to use water on the land to be irrigated.

§ 2520.0–7 Cross references.

(a) For assignment of desert-land entries within Government reclamation projects, see § 2524.5(a).

(b) For provisions under Appeals and Hearings see parts 1840 and 1850 of this chapter.

(c) For relinquishments, in general, see subpart 1825 of this chapter.

(d) For residence and cultivation requirements under the homestead laws, see § 2511.4-2(a).

§ 2520.0–8 Land subject to disposition.

(a) *Land that may be entered as desert land.* (1) As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, non-mineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in subpart 2093, nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L.D. 522 and 42 L.D. 524.)

(2) Applications to make desert-land entries of lands embraced in applications, permits, or leases under the Act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with §§ 2093.0-3 to 2093.0-7. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

(3) Land that has been effectually reclaimed is not subject to desert land entry.

(b) *Quantity of lands that may be entered.* An entry of lands under the Act of March 3, 1877, is limited to 320 acres, subject to the following additional limitations:

(1) An entry of lands within an irrigation district which the Secretary of the Interior or his delegate has approved under the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), is limited to 160 acres.

(2) An entryman may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres (Acts of August 30, 1890; 26 Stat. 391; 43 U.S.C. 212; and of February 27, 1917; 39 Stat. 946; 43 U.S.C. 330).

(c) *Entries restricted to surveyed lands.* Unsurveyed public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to appropriation, under the desert-land laws, until such appropriation has been authorized by classification. (See parts 2410, 2420, and 2430.)

(d) *Economic unit requirements, compactness.* (1) One or more tracts of public lands may be included in a desert land entry and the tracts so entered need not be contiguous. All the tracts entered, however, shall be sufficiently close to each other to be managed satisfactorily as an economic unit. In addition, the lands in the entry must be in as compact a form as possible taking into consideration the character of available public lands and the effect of allowance of the entry on the remaining public lands in the area.

(2) In addition to the other requirements of the regulations in this part, applicants for desert land entry must submit with their applications information showing that the tracts applied for are sufficiently close to each other to be managed satisfactorily as an economic unit and that the lands in

the application are as compact as possible in the circumstances.

(3) In determining whether an entry can be allowed in the form sought, the authorized officer of the Bureau of Land Management will take into consideration such factors as the topography of the applied for and adjoining lands, the availability of public lands near the lands sought, the private lands farmed by the applicant, the farming systems and practices common to the locality and the character of the lands sought, and the practicability of farming the lands as an economically feasible operating unit.

Subpart 2521—Procedures

SOURCE: 35 FR 9582, June 13, 1970, unless otherwise noted.

§ 2521.1 Who may make desert-land entry.

(a) *Citizenship.* (1) Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the statements specified in §§ 2520.0-8(c) and 2521.2(a) can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications, can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

(2) At the time of making final proof claimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

(b) *Second and additional entries.* A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except under the conditions described in paragraphs (b)(1) and (2) of this section.

(1) Under the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted to make another entry or to take one or any part thereof by assignment except where paragraph (b)(2) of this section applies.

(2) The Act of June 16, 1955 (69 Stat. 138) authorizes any person who prior to June 16, 1955, made a valid desert-land entry on lands subject to the Acts of June 22, 1910 (36 Stat. 583; 30 U.S.C. 33-85), or of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), if otherwise qualified to enter as a personal privilege not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the Act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 2520.0-8(b).

§ 2521.2 Petitions and applications.

(a) *Filing and fees.* (1) A person who desires to enter public lands under the desert land laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the desert land laws, no petition is required. The documents must be filed in the proper office (see § 1821.2-1 of this chapter).

(2) All applications must be accompanied by an application service fee of $15 which is not returnable, and the payment of 25 cents per acre for the lands therein described as required by law.

(b) *Post-office addresses of applicants and witnesses.* Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the authorizing officer of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them.

(c) *Execution of applications and proofs; time for filing of applications.* (1) Applications and proofs, except final proofs required by R.S. 2294 (43 U.S.C. 254), must be signed by the applicants but need not be under oath. Final proofs may be executed before any officer authorized to administer oaths in public land cases, as explained by § 1821.3-2 of this chapter.

(2) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the land office.

(d) *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. The authorizing officer will examine the evidence submitted in such applications and either reject defective applications or require additional evidence.

§ 2521.3 Assignment.

(a) *Lands which may be assigned.* While by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 329), assignments of desert-land entries were recognized, the Department of the Interior, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The Act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous.

(b) *Qualifications of assignees.* (1) The Act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a ciitzen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under § 2521.1 to make a second or an additional entry, he cannot take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second or additional entry.

(2) A person who has the right to make a second or additional desert-land entry may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned.

(3) The Act of March 28, 1908 also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

(c) *Showing required of assignees; recognition of assignments.* (1) As evidence of the assignment there should be transmitted to the authorizing officer the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

(2) An assignee must file with his deed of assignment, a statement on a form approved by the Director, showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status in accordance with subpart 1811 of this chapter. If the assignee is a woman, she should in all cases state whether she is married, and if so, she must make the showing required by subpart 1811 of this chapter. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the application prior to such payment. (6 L.D. 541, 33 L.D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L.D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L.D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgements of deeds. The assignee must furnish a statement on a form approved by the Director as to his qualifications.

(3) No assignments of desert-land entries or parts of entries are conclusive until examined in the proper office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the authorizing officer, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L.D. 90 and 48 L.D. 519.

(4) All applications for recognition of assignment of desert-land entries must be accompanied by an application service fee of $10 which will not be returnable.

§ 2521.4 When lands may be sold, taxed, or mortgaged.

(a) After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so contained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

(b) Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

(c) Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), may be taxed and otherwise dealt with as provided by said act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the Act of June 13, 1930 (46 Stat. 581; 43 U.S.C. 455, 455a–455c).

(d) A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrancers may file in the proper office written notice stating the nature of their claims, and they will there upon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry.

(e) The filing of all notices of recordation of claim by transferees, mortgagees or other encumbrancer under this section must be accompanied by a service charge of $10 which will not be returnable.

§ 2521.5 Annual proof.

(a) *Showing required.* (1) In order to test the sincerity and good faith of claimants under the desert-land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than 4 years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

(2) Yearly or annual proof of expenditures must consist of the statements of *two or more credible witnesses*, each of whom must have general knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

(b) *Acceptable expenditures.* (1) Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

(2) The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L.D. 106.)

(c) *Expenditures not acceptable.* (1) Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instances, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the Act of September 5, 1914, cannot receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L.D. 601 and 42 L.D. 523.)

(2) Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land will not be accepted.

(3) No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

(d) *Procedure where proof is not made when due.* Authorizing officers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

(e) *Desert land entry in more than one district.* When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify the authorized officer of the adjoining district by letter of the date when the annual proof is filed.

(f) *Extensions of time.* (1) The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936, on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose cannot therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L.D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

(2) Extensions of time for making desert-land proofs were authorized by the Acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

(g) *Submission of proof before due date.* Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

§ 2521.6 Final proof.

(a) *General requirements.* The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

(1) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

(b) *Notice of intention to make final proof.* When an entryman has reclaimed the land and is ready to make final proof, he should apply to the authorizing officer for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(c) *Publication of final-proof notice.* The authorizing officer will issue the usual notice for publication. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L.D. 131; 43 L.D. 216). The claimant must pay the cost of the publication but it is the duty of authorizing officers to procure the publication of proper final-proof notices. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by someone authorized to act for him.

(d) *Submission of final proof.* On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 1821.3-2 of this chapter.

(e) *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches, canals, conduits, and other means to conduct water to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

(f) *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L.D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches, canals, conduits, and other means to conduct water necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L.D. 269.)

(g) *Showing as to tillage of land.* As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L.D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

(h) *Showing as to water right.* (1) In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

(2) In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L.D. 305.)

(3) It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully

indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

(4) Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, cannot be viewed as meeting the requirements of the desert-land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

(i) *Showing where water supply is derived from irrigation project.* (1) Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer either with his final proof or subsequently such evidence as he can tending to support his contentions.

(2) Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the authorizing officer will endorse the name and address of the project upon the copy of the notice to be forwarded to the State Director. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the authorizing officer will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time the authorizing officer will reject the proof, subject to the usual right of appeal.

(j) *Final-proof expiration notice.* (1) Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the claimant will be allowed 90 days in which to submit final proof. (44 L.D. 364.)

(2) Should no action be taken within the time allowed, the entry will be canceled. The 90 days provided for in this section must not be construed as an extension of time or as relieving

the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

(k) *Requirements where township is suspended for resurvey.* No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L.D. 223.) This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township.

§ 2521.7 Amendments.

(a) *To enlarge area of desert-land entry.* Amendment for the purpose of enlarging the area of a desert-land entry will be granted under and in the conditions and circumstances now to be stated.

(1) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said ands having since been released from uch appropriations.

(2) Where contiguous tracts have een omitted from entry because of ntryman's belief, after a reasonably areful investigation, that they could ot be reclaimed by means of the ater supply available for use in that ehalf, it having been subsequently iscovered that reclamation thereof n be effectively accomplished by eans of a changed plan or method of nserving or distributing such water pply.

(3) Where, at the time of entry, the tryman announced, in his declaran, his purpose to procure the canllation, through contest or relinishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

(b) *Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.* Applications for amendment presented pursuant to § 1821.6-5(a) of this chapter will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6-1 to 1821.6-5 of this chapter and on the prescribed form, in so far as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

(c) *Evidence of water-right to accompany application to amend desert-land entry.* Application to amend desert-land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by § 2521.2.

§ 2521.8 Contests.

(a) Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

(b) Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the authorizing officer will give the same notice and is entitled to the same fee for notice as in other cases.

§ 2521.9 Relinquishments.

A desert-land entry may be relinquished at any time by the party owning the same. Conditional relinquishments will not be accepted.

Subpart 2522—Extensions of Time To Make Final Proof

SOURCE: 35 FR 9587, June 13, 1970, unless otherwise noted.

§ 2522.1 General acts authorizing extensions of time.

(a) There are five general Acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said Acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U.S.C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U.S.C. 333); April 30, 1912 (37 Stat. 106; 43 U.S.C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U.S.C. 335); and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336). The Act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388).

(b) In addition to the Acts cited in this section, extensions of time for making desert-land proofs were authorized by the Acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such Acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

§ 2522.2 Procedure on applications for extensions of time, where contest is pending.

(a) A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension (41 L.D. 603).

(b) Consideration of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges.

§ 2522.3 Act of March 28, 1908.

Under the provisions of the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 333), the period of 4 years may be extended, in the discretion of the authorized officer, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. Applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen (37 L.D. 332). It must also appear that he has complied with the law as to annual expenditures and proof thereof.

§ 2522.4 Act of April 30, 1912.

(a) Under the provisions of the Act of April 30, 1912 (37 Stat. 106; 43 U.S.C. 334), a further extension of time may be granted for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended o convey water to the land embraced n his entry, the claimant is, without ault on his part, unable to make proof of the reclamation and cultivaion of said lands within the time limted therefor, but such further extenion cannot be granted for a period of nore than 3 years nor affect contests nitiated for a valid existing reason.

(b) An entryman who has complied ith the law as to annual expenditures nd proof thereof and who desires to ake application for extension of time nder the provisions of the Act of arch 28, 1908, should file with the uthorizing officer a statement setting orth fully the facts, showing how and hy he has been prevented from aking final proof of reclamation and ltivation within the regular period. his statement must be corroborated two witnesses who have personal owledge of the facts.

2522.5 Act of February 25, 1925.

Applications for further extension of ne under the Act of April 30, 1912, d February 25, 1925 (43 Stat. 982; 43 S.C. 336), may be made in the same anner, and the same procedure will followed with respect to such applitions as under the Act of March 28, 08, and the Act of March 4, 1915 (38 at. 1161; 43 U.S.C. 335), as amended.

522.6 Service fees.

ll applications for extension of ne made under the Acts of March 1908, April 30, 1912, or February 1925, must be accompanied by an plication service fee of $10 which l not be returnable.

Subpart 2523—Payments

§ 2523.1 Collection of purchase money and fees; issuance of final certificate.

(a) At the time of making final proof the claimant must pay to the authorizing officer the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law.

(b) If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

(c) When final proof is made on an entry made prior to the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the authorizing officer will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the authorizing officer. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the proper office the authorizing office will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the Act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries.

(d) If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land.

[35 FR 9588, June 13, 1970]

§ 2523.2 Amounts to be paid.

No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the Act of February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making the final proof. On all final proofs made before the authorizing officer, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof shall be accepted or approved until all charges have been paid.

[35 FR 9588, June 13, 1970]

Subpart 2524—Desert-Land Entries Within a Reclamation Project

AUTHORITY: Sec. 10, 32 Stat. 390; as amended; 43 U.S.C. 373.

SOURCE: 35 FR 9588, June 13, 1970, unless otherwise noted.

§ 2524.1 Conditions excusing entrymen from compliance with the desert-land laws.

(a) By section 5 of the Act of June 27, 1906 (34 Stat. 520, 43 U.S.C. 448), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 *et seq.*) will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

(b) *Persons excused from compliance with the desert-land laws.* Section 5 of the Act of June 27, 1906, applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project, or by any withdrawal of public lands under the reclamation law, from improving or reclaiming the lands covered by their entries.

(c) *Statement required to warrant excuse.* No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the proper office for the district in which his lands are situated a statement showing in detail all of the facts upon which he claims the right to be excused. This statement must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

§ 2524.2 Annual proof.

(a) *Extension of time.* Inasmuch as entrymen are allowed 1 year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of the Act of June 27, 1906, are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his statement explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

(b) *When application for extension of time should be filed.* An entryman will not need to invoke the privileges of the Act of June 27, 1906, in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of a reclamation project, the statement explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

§ 2524.3 Time extended to make final proof.

When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, he will be excused and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

§ 2524.4 Beginning of period for compliance with the law.

If, after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman shall begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must, if he depends on the Government's project for his water supply, comply with all provisions of the reclamation law, and must under the Act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), relinquish or assign in not less than 2 years after notice all the land embraced in his entry in excess of one farm unit, and upon making final proof and complying with the regulations of the Department applicable to the remainder of the irrigable land of the project and with the terms of payment prescribed in the reclamation law, he shall be entitled to patent as to such retained farm unit, and final water-right certificate containing lien as provided for by the Act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541-546), Act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), and the Act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), or to patent without a lien if provision therefor shall have been made as provided for by the Act of May 15, 1922 (42 Stat. 541; 43 U.S.C. 511-513).

§ 2524.5 Assignment of desert-land entries in whole or in part.

(a) *Act of July 24, 1912.* Under the Act of July 24, 1912 (37 Stat. 200; 43 U.S.C. 449), desert-land entries covering lands within the exterior limits of a Government reclamation project may be assigned in whole or in part, even though water-right application has been filed for the land in connection with the Government reclamation project, or application for an extension of time in which to submit proof on the entry has been submitted, under the Act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), as amended by the Act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), requiring reduction of the area of the entry to one farm unit.

(b) *Amendment of farm-unit plat after partial assignment.* Where it is desired to assign part of a desert-land entry which has been designated as a farm unit, application for the amendment of the farm-unit plat should be filed with the official in charge of the project, as in the case of assignments of homestead entries. (See § 2515.5 (a)(3) to (5).) The same disposition of amendatory diagrams will be made and the same procedure followed as provided for assignments of homestead entries.

§ 2524.6 Desert-land entryman may proceed independently of Government irrigation.

Special attention is called to the fact that nothing contained in the Act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation law, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

§ 2524.7 Disposal of lands in excess of 160 acres.

Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish or assign all of the lands embraced in their entries in excess of one farm unit in not less than 2 years after notice through the land office, must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project, and also comply with the regulations of the Department applicable to the remainder of the irrigable land of the project.

§ 2524.8 Cancellation of entries for nonpayment of water-right charges.

All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forfeiture, whether water-tight application has been made or not.

PART 2530—INDIAN ALLOTMENTS

Subpart 2530—Indian Allotments: General

Sec.
2530.0-3 Authority.
2530.0-7 Cross reference.
2530.0-8 Land subject to allotment.

Sec.

Subpart 2531—Applications, Generally

2531.1 Qualifications of applicants.
2531.2 Petition and applications.
2531.3 Effect of application.

Subpart 2532—Allotments

2532.1 Certificate of allotment.
2532.2 Trust patent.

Subpart 2533—Allotments Within National Forests

2533.0-3 Authority.
2533.0-8 Land subject to allotment.
2533.1 Application.
2533.2 Approval.

Subpart 2530—Indian Allotments: General

AUTHORITY: R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 2530.0-3 Authority.

(a) *General Allotment Act of February 8, 1887.* Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389; 25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794), and section 17 of the Act of June 25, 1910 (36 Stat. 859; 25 U.S.C. 336), provides that where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the proper office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and that such allotments to Indians on the public domain shall not exceed 40 acres of irrigable land, or 80 acres of nonirrigable agricultural land or 160 acres of nonirrigable grazing land to any one Indian.

(b) *Act of March 1, 1933.* The Act of March 1, 1933 (47 Stat. 1418; 43 U.S.C. 190a) provides that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

(c) *Executive Orders 6910 and 6964, Taylor Grazing Act of June 28, 1934.* Public land withdrawn by Executive

Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, and land within grazing districts established under section 1 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315), is not subject to settlement under section 4 of the General Allotment Act of February 8, 1887, as amended, until such settlement has been authorized by classification. See parts 2410, 2420, and 2430 of this chapter.

[35 FR 9589, June 13, 1970, as amended at 37 FR 23184, Oct. 31, 1972]

§ 2530.0-7 Cross reference.

For native allotments in Alaska see subpart 2561 of this chapter.

[35 FR 9589, June 13, 1970]

§ 2530.0-8 Land subject to allotment.

(a) *General.* (1) The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

(2) Irrigable lands are those susceptible of successful irrigation at a reasonable cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to any agricultural use other than grazing.

(3) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

[35 FR 9589, June 13, 1970]

Subpart 2531—Applications, Generally

§ 2531.1 Qualifications of applicants.

(a) *General.* An applicant for allotment under the fourth section of the Act of February 8, 1887, as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

(b) *Certificate that applicant is Indian and eligible for allotment.* Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and eligible for such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2531.2(b).

(c) *Heirs of Indian settlers and applicants.* (1) Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

(2) In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

(3) When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

(d) *Minor children.* An Indian settler on public lands under the fourth section of the Act of February 8, 1887, as amended, is also eligible upon application for allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationship referred to exist at such date. The law only permits one eligible himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those who have lost both parents) are not eligible for allotments on the public domain unless they come within the last-mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

(e) *Indian wives.* (1) Where an Indian woman is married to non-Indian not eligible for an allotment under the fourth section of the Act of February 8, 1887, as amended, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such women and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

(2) An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise eligible, and also for her minor children where her husband is for any reason disqualified.

(3) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

(4) In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

(f) *Citizenship.* (1) Under section 6 of the Act of February 8, 1887 (24 Stat. 390; 25 U.S.C. 349), every Indian born within the territorial limits of the United States, to whom allotments were made under that Act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

(2) The Act of May 8, 1906 (34 Stat. 182; 8 U.S.C. 3), changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

(3) The Act of June 2, 1924 (43 Stat. 253, 8 U.S.C. 3), conferred citizenship on all noncitizen Indians born within the Territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land, if qualified.

[35 FR 9589, June 13, 1970, as amended at 37 FR 23185, Oct. 31, 1972]

§ 2531.2 Petition and applications.

(a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see subpart 2533 of this part) must file with the authorized officer, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and eligible for allotment, as specified in

§ 2531.1(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

The petition and the statement attached to the application for certificate must be signed by the applicant.

(b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

[35 FR 9590, June 13, 1970]

§ 2531.3 Effect of application.

(a) Where an allotment application under the fourth section of the Act of February 8, 1887, as amended, 25 U.S.C. 334 (is not accompanied by the requisite certificate from the Bureau of Indian Affairs showing the applicant to be eligible for an allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(b) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent application for the same land will be rejected.

[37 FR 23185, Oct. 31, 1972]

Subpart 2532—Allotments

§ 2532.1 Certificate of allotment.

(a) When the authorizing officer approves an application for allotment, he will issue to the applicant a *certificate of allotment*, on a prescribed form, showing the name in full of the applicant, post office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land allotted.

(b) Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section.

[35 FR 9591, June 13, 1970]

§ 2532.2 Trust patent.

(a) To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of 2 years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued will run from the date of suspension.

(b) In the matter of fourth-section applications filed prior to the regulations in this part, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by the regulations, such applications will not be immediately rejected, but the applicant will be informed that 2 years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his application will be adjudicated as in other cases.

[35 FR 9591, June 13, 1970]

Subpart 2533—Allotments Within National Forests

SOURCE: 35 FR 9591, June 13, 1970, unless otherwise noted.

§ 2533.0-3 Authority.

By the terms of section 31 of the Act of June 25, 1910 (36 Stat. 863; 25 U.S.C. 337), allotments under the fourth section of the Act of February 8, 1887, as amended, may be made within national forests.

§ 2533.0-8 Land subject to allotment.

An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. The rules governing the conduct of fourth-section applications under the Act of February 8, 1887 as amended, apply equally to applications under said section 31.

§ 2533.1 Application.

An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

§ 2533.2 Approval.

(a) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(b) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

(c) If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

[35 FR 9591, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

PART 2540—COLOR-OF-TITLE AND OMITTED LANDS

Subpart 2540—Color-of-Title: Authority and Definitions

Sec.
2540.0-3 Authority.
2540.0-5 Definition.

Subpart 2541—Color-of-Title Act

2541.1 Who may apply.
2541.2 Procedures.
2541.3 Patents.
2541.4 Price of land; payment.
2541.5 Publication; protests.

Subpart 2542—Color-of-Title Claims: New Mexico, Contiguous to Spanish or Mexican Grants

2542.1 Application.
2542.2 Evidence required.
2542.3 Publication and posting of notice.
2542.4 Patent.

Subpart 2543—Erroneously Meandered Lands: Arkansas

2543.1 Applications.
2543.2 Appraisal of land.
2543.3 Purchase price required.
2543.4 Publication and posting.
2543.5 Patent.

Subpart 2544—Erroneously Meandered Lands: Louisiana

2544.1 Applications.
2544.2 Appraisal of land.
2544.3 Notice to deposit purchase price.
2544.4 Publication and posting.
2544.5 Patent.

Subpart 2545—Erroneously Meandered Lands: Wisconsin

2545.1 Qualifications of applicants.
2545.2 Applications.
2545.3 Publication and protests.
2545.4 Price of land; other conditions.

Subpart 2546—Snake River, Idaho: Omitted Lands

2546.1 Offers of lands for sale.
2546.2 Applications for purchase.
2546.3 Payment and publication.
2546.4 Public auctions.

Subpart 2547—Omitted Lands: General

2547.1 Qualifications of applicants.
2547.2 Procedures; applications.
2547.3 Price of land; payment.

Sec.
2547.4 Publication and protests.
2547.5 Disposal considerations.
2547.6 Lands not subject to disposal under this subpart.
2547.7 Coordination with State and local governments.

Subpart 2540—Color-of-Title: Authority and Definitions

§ 2540.0-3 Authority.

(a) *Act of December 22, 1928.* The Act of December 22, 1928 (45 Stat. 1069), as amended by the Act of July 28, 1953 (67 Stat. 227; 43 U.S.C. 1068, 1068a), authorizes the issuance of patent for not to exceed 160 acres of public lands held under claim or color of title of either of the two classes described in § 2540.0-5(b) upon payment of the sale price of the land.

(b) *Act of February 23, 1932.* The Act of February 23, 1932 (47 Stat. 53; 43 U.S.C. 178), authorizes the Secretary of the Interior in his discretion to issue patents, upon the payment of $1.25 per acre, for not more than 160 acres of public land, where such land is contiguous to a Spanish or Mexican land grant, and where such land has been held in good faith and in peaceful, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years under claim or color of title and where valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation. The act further provides that where the land is in excess of 160 acres, the Secretary may determine the 160 acres to be patented under the Act. Under the said act the coal and all other minerals in the land are reserved to the United States and shall be subject to sale or disposal under applicable leasing and mineral land laws of the United States.

(c) *Act of September 21, 1922.* The Act of September 21, 1922 (42 Stat. 992; 43 U.S.C. 992), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Arkansas, which were originally erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who in good faith under color of title or claiming as a riparian owner, has prior to September 21, 1922, placed valuable improvements on such land or reduced some part thereof to cultivation.

(d) *Act of February 19, 1925.* The Act of February 19, 1925 (43 Stat. 951; 43 U.S.C. 993), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Louisiana, which were originally erroneously meandered and shown upon the official plats as water-covered areas and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who or whose ancestors in title in good faith under color of title or claiming as a riparian owner, has prior to February 19, 1925, placed valuable improvements upon or reduced to cultivation any of such lands. The coal, oil, gas, and other minerals in such lands are reserved to the United States.

(e) *Act of August 24, 1954.* The Act of August 24, 1954 (68 Stat. 789), directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, under certain terms and conditions. The Act of February 27, 1925 (43 Stat. 1013 43 U.S.C. 994), authorized the Secretary of the Interior to sell such public lands under certain other terms and conditions. These Acts are cited as *the Act of 1954* and *the Act of 1925*, respectively, in §§ 2545.1 to 2545.4.

(f) *Act of May 31, 1962.* (1) The Act of May 31, 1962 (76 Stat. 89), hereafter referred to as *the Act*, authorizes the Secretary of the Interior, in his discretion, to sell at not less than their fair market value any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its tributaries, which have been, or may be, found upon survey to be omitted public lands of the United States, and which are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

(2) The Act provides that in all patents issued under the Act, The Secretary of the Interior (i) shall include a reservation to the United States of all the coal, oil, gas, oil shale, phosphate, potash, sodium, native asphalt, solid and semisolid bitumen, and bitumen rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), together with the right to prospect for, mine, and remove the same; and (ii) may reserve the right of access to the public through the lands and such other reservations as he may deem appropriate and consonant with the public interest in preserving public recreational values in the lands.

(3) The Act further provides that the Secretary of the Interior shall determine the fair market value of the lands by appraisal, taking into consideration any reservations specified pursuant to paragraph (f)(2) of this section and excluding, when sales are made to preference-right claimants under section 2 of the Act, any increased values resulting from the development or improvement thereof for agricultural or other purposes by the claimant or his predecessors in interest.

(4) The Act grants a preference right to purchase lands which are offered by the Secretary of the Interior for sale under the Act to any citizen of the United States (which term includes corporations, partnerships, firms, and other legal entities having authority to hold title to lands in the State of Idaho) who, in good faith under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation or occupied any of the lands so offered for sale, or whose ancestors or predecessors in title have taken such action.

(g) The Federal Land Policy and Management Act of 1976.

(1) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior in his discretion to sell at not less than fair market value to the occupant thereof any omitted lands which, after survey, are found to have been occupied and developed for a 5-year period prior to January 1, 1975.

(2) The Act provides that all such conveyances under the Act must be in the public interest and will serve objectives which outweigh all public objectives and values served by retaining such lands in Federal ownership.

(3) Section 208 of the Act (43 U.S.C. 1718) further provides that the Secretary of the Interior shall issue patents subject to such terms, convenants, conditions, and reservations as deemed necessary to insure proper land use and protection of the public interest.

(4) Section 209 of the Act (43 U.S.C. 1719) provides that all patents issued under the Act shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except as provided by section 209(b) of the Act.

[35 FR 9561, June 13, 1970, as amended at 44 FR 41793, July 18, 1979]

§ 2540.0-5 Definition.

(a) *The act*, when used in this section means the Act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068, 1068a), as amended by the Act of July 28, 1953 (67 Stat. 227, 43 U.S.C. 1068a).

(b) The claims recognized by the Act will be referred to in this part as claims of class 1, and claim of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title

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2, June 13, 1970]

rt 2541—Color-of-Title Act

35 FR 9592, June 13, 1970, unless
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Vho may apply.

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Procedures.

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rvey has been officially filed.

entation and verification of
atements. (1) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on a form approved by the Director. The statements of record conveyances must be certified by the proper county official or by an abstractor. The applicant may be called upon to submit documentary or other evidence relating to conveyances or claims. Abstracts of title or other documents which are so requested will be returned to the applicant.

(2) Applicants for claims of class 2 must itemize all information relating to tax levies and payments on the land on a form approved by the Director which must be certified by the proper county official or by an abstractor.

§ 2541.3 Patents.

(a) Any applicant who satisfied all requirements for a claim of class 1 or class 2 commencing not later than January 1, 1901, to the date of application and who so requests in the application will receive a patent conveying title to all other minerals except:

(1) Any minerals which, at the time of approval of the application, are embraced by an outstanding mineral lease or

(2) Any minerals for which the lands have been placed in a mineral withdrawal.

All other patents will reserve all minerals to the United States.

(b) All mineral reservations will include the right to prospect for, mine, and remove the same in accordance with applicable law.

(c) The maximum area for which patent may be issued for any claim under the act is 160 acres. Where an area held under a claim or color of title is in excess of 160 acres, the Secretary has authority under the act to determine what particular subdivisions not exceeding 160 acres, may be patented.

§ 2541.4 Price of land; payment.

(a) *Price of land.* The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements or development by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than $1.25 per acre.

(b) *Payment.* Applicant will be required to make payment of the sale price of the land within the time stated in the request for payment.

§ 2541.5 Publication; protests.

(a) The applicant will be required to publish once a week for four consecutive weeks in accordance with § 1824.3 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the office specified in § 2541.1-2(a) their objections to the issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

Subpart 2542—Color-of-Title Claims: New Mexico, Contiguous to Spanish or Mexican Grants

SOURCE: 35 FR 9593, June 13, 1970 unless otherwise noted.

§ 2542.1 Application.

(a) *Where filed; purchase price required.* Applications under the Act of February 23, 1932 must be filed with the authorizing officer of the proper office at Santa Fe, New Mexico, and should be accompanied by payment of the purchase price of the land applied for at the rate of $1.25 per acre.

(b) *Form.* No special form of application is provided. The application should be in typewritten form or in legible handwriting and must be corroborated by at least two disinterested persons having actual knowledge of the facts alleged therein.

(c) *Contents of application.* Applicants desiring to take advantage of the benefits of the Act of February 23, 1932, must show the following matters in their applications:

(1) Full name and post-office address of the applicant and whether married or single.

(2) Description of the land for which patent is desired. If surveyed, the land should be described by legal subdivision, section, township, and range. If unsurveyed, the land should be described by metes and bounds.

(3) That the land applied for is contiguous to a Spanish or Mexican land grant. The grant should be identified by name, number, patentee or description of land involved. The points or places at which the land applied for is contiguous to the Spanish or Mexican land grant, must be clearly shown.

(4) That possession of the lands applied for has been maintained for more than 20 years under claim or color of title. If the applicant is claiming as a record owner, he or she will be required to file an abstract of title, certified to by a competent abstractor, showing the record of all conveyances of the land up to the date of the filing of the application. If the applicant is not a record owner and no abstract of title can be furnished, statements must be filed, setting forth the names of all mesne possessors of the land, the periods held by each, giving the dates and manner of acquiring possession of the land, and the acts of dominion exercised over the land by each possessor.

(5) That the lands have been held in good faith and in peaceful, adverse possession. The applicant should show whether or not he and his predecessors in interest have paid taxes on the lands and for what periods of time, and whether any consideration was paid for any conveyances of the land. It should further be shown whether there is any person who is claiming the land adversely to the applicant, and if there be such, the name and address of such adverse claimant should be furnished.

(6) Whether or not valuable improvements have been erected upon the land applied for and whether or not any part of such land has been reduced to cultivation. If improvements have been made, the nature, the value, the exact location, and the time of

thereof, should be fully dis-
ogether with the identity of
who was responsible for erect-
improvements. If any of the
been reduced to cultivation,
division so claimed to have
luced must be identified and
unt and nature of the cultiva-
st be set forth, together with
thereof.

Evidence required.

izenship. The applicant must
a statement showing whether
licant is a native-born or nat-
citizen of the United States.
vent an applicant is a natural-
zen, the statement should
date of the alleged natural-
r declaration of intention, the
location of the court in which
d, and when available, the
of the document in question,
roceeding has been had since
er 26, 1906. In addition, in
naturalization prior to Sep-
7, 1906, there should be given
and place of the applicant's
the foreign country of which
cant was a citizen or subject.
he applicant is a corporation,
d copy of the articles of incor-
should be filed.

eage claimed. The applicant
tement required under para-
of this section must show
and claimed is not a part of a
ch embraced more than 160
ebruary 23, 1932. If the land
part of a claim containing
160 acres, a full disclosure
concerning the larger claim
rnished.

iblication and posting of notice.

on consideration of the ap-
is determined that the ap-
ntitled to purchase the land
, the applicant will be re-
ublish notice of the applica-
ewspaper of general circula-
county wherein the land
is situated. Notice for pub-
all be issued in the follow-

Land Office,
Santa Fe, New Mexico.

Notice is hereby given that ——————
(Name of applicant) of ——————
(Address) has filed application ——————
(Number and land office) under the Act of February 23, 1932 (47 Stat. 53), to purchase —————— (Land)
Sec.——, T.——, R.——, —————— Mer., claiming under ——————
(Ground of claim).

The purpose of this notice is to allow all persons having bona fide objection to the proposed purchase, an opportunity to file their protests in this office on or before

——————
(Date)

——————
(Manager)

(b) The notice shall be published at the expense of the applicant and such publication shall be made once each week for a period of five consecutive weeks. A copy of the notice will be posted in the proper office during the entire period of publication. The applicant must file evidence showing that publication has been had for the required time, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice as published.

§ 2542.4 Patent.

(a) Upon submission of satisfactory proof of publication and the expiration of the time allowed for the filing of objections against the application, if there be no protest, contest or other objection against the application, patent will then be issued by the authorizing officer.

(b) There will be incorporated in patents issued on applications under the above Act, the following:

> Excepting and reserving, however, to the United States, the coal and all other minerals in the land so patented, together with the right of the United States or its permittees, lessees, or grantees, to enter upon said lands for the purpose of prospecting for and mining such deposits as provided for under the Act of February 23, 1932 (47 Stat. 53).

Subpart 2543—Erroneously Meandered Lands: Arkansas

SOURCE: 35 FR 9593, June 13, 1970, unless otherwise noted.

§ 2543.1 Applications.

(a) Applications to purchase under the Act of September 21, 1922, must be signed by the applicant in the State of Arkansas. Such applications had to be filed within 90 days from the date of the passage of this Act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plats. The applicant must show that he is either a native-born or naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of title his claim is based, and that the applied-for lands are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation had, if any, and how long continued. This application must be supported by the statements of two persons having personal knowledge of the facts alleged in the application.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2543.2 Appraisal of land.

When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the Act of September 21, 1922.

§ 2543.3 Purchase price required.

If upon consideration of the application it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified by registered mail that he must within 30 days from service of notice deposit the appraised price, or thereafter, and without further notice, forfeit all rights under his application.

§ 2543.4 Publication and posting.

Upon payment of the appraised price a notice of publication will be issued. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau of Land Management will cause a notice similar to the notice for publication to be posted in such office, during the entire period of publication. The publisher of the newspaper must file in the Bureau of Land Management prior to the date fixed by the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice published.

§ 2543.5 Patent.

Upon submission of satisfactory proof, if no protest or contest is pending, patent will be issued.

Subpart 2544—Erroneously Meandered Lands: Louisiana

SOURCE: 35 FR 9594, June 13, 1970, unless otherwise noted.

§ 2544.1 Applications.

(a) Applications to purchase under the Act of February 19, 1925, must be signed by the applicant in the State of Louisiana. Such applications had to be filed within 90 days from the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plat. The applicant must show that he is either a native-born or a naturalized citizen of the United

nd, if naturalized, file record
thereof; must describe the
ch he desires to purchase, to-
vith the land claimed as the
his preference right to the
plied for it he applies as a ri-
wner, or if claiming otherwise,
nat color of the title his claim
in other words, a complete
of the claim, and that the
plied for are not lawfully ap-
ed by a qualified settler or en-
under the public land laws,
ne legal possession of any ad-
plicant; the kind, character,
e of the improvements on the
ered by the application; when
re placed thereon; the extent
ltivation, if any, and how long
d. Such application must be
d by the statement of at least
ons having personal knowl-
he facts alleged in the appli-

l applications to purchase
e act must be accompanied by
ation service fee of $10 which
e returnable.

ppraisal of land.

an application is received it
ssigned for investigation and
nent of the land in accord-
the provisions of the act.

otice to deposit purchase price.

n consideration of the appli-
shall be determined that the
is entitled to purchase the
lied for, the applicant will be
by registered mail, that he
in 6 months from receipt of
posit the appraised price of
or else forfeit all his rights
application.

blication and posting.

ayment of the appraised
e land the Bureau will issue
publication. Such notice
ublished at the expense of
nt in a designated newspa-
ral circulation in the vicini-
ands, once a week for five
weeks. In accordance with
this chapter, immediately
e date of sale, but a suffi-
shall elapse between the
last publication and the

date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau will also cause a copy of such notice of publication to be posted in such office during the entire period of publication. The applicant must file in the Bureau prior to the date fixed for the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher accompanied by a copy of the notice so published.

§ 2544.5 Patent.

Upon the submission of satisfactory proof, the Bureau will, if no protest or contest is pending, issue patent, such patent to contain a stipulation that all the minerals in the lands described in the application are reserved to the United States with the right to prospect for, mine and remove same.

Subpart 2545—Erroneously Meandered Lands: Wisconsin

SOURCE: 35 FR 9594, June 1 970, unless otherwise noted.

§ 2545.1 Qualifications of applicants.

(a) To qualify under the Act of 1954, a person, or his predecessors in interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good faith and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

(b) To qualify under the Act of 1925, a person must either (1) be the owner in good faith of land, acquired prior to February 27, 1925, shown by the official public land surveys to be bounded in whole or in part by such public lands or (2) be a citizen of the United States who, in good faith under color of title or claiming as a riparian owner, had, prior to February 27, 1925, placed valuable improvements upon or reduced to cultivation any of such public lands.

§ 2545.2 Applications.

(a) Claimants under the Act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them. Applications for public lands under the Act of 1954 must be filed within 1 year after August 24, 1954, or 1 year from the date of the official plat or resurvey, whichever is later. All applications must be filed in the proper office (see § 1821.2-1 of this chapter).

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the applicant.

(2) The legal description and acreage of the public lands claimed or desired.

(3) The legal description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired. If the claim is based on ownership of such adjoining lands, the application must be accompanied by a certificate from the proper county official or by an abstractor, showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) If the applicant is a color-of-title applicant under the Act of 1925, a statement whether or not the applicant is a citizen of the United States.

(5) If the application is based on color of title or riparian claim under the Act of 1925, a statement fully disclosing the facts of the matter; or if the application is based on peaceful, adverse possession under the Act of 1954, a similar statement showing peaceful, adverse possession by the applicant, or his predecessors in interest, since the issuance of the patent to the lands adjoining the claimed lands.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation, if any, of the lands applied for, including the nature, location, and dates of such cultivation.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands applied for or claimed.

(9) The names and post office addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2545.3 Publication and protests.

(a) The applicant will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the Bureau of Land Management, Washington, DC, their objections to issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2545.4 Price of land; other conditions.

(a) Persons entitled to a patent under the Act of 1954 must, within 30 days after request therefor, pay, under the same terms and conditions, the same price per acre as was paid for the land included in their original patent.

(b) Persons entitled to a patent under the Act of 1925, within 30 days after request therefor, must pay the appraised price of the lands, which price will be the value of the lands as of the date of appraisal, exclusive of any increased value resulting from the development or improvement of the

agricultural purposes by the
or his predecessors in inter-
clusive of the stumpage value
nber cut or removed by them.

2546—Snake River, Idaho: Omitted Lands

35 FR 9595, June 13, 1970, unless
noted.

)ffers of lands for sale.

any lands may be sold under
the authorized officer of the
of Land Management shall
in the FEDERAL REGISTER and
st one newspaper of general
on within the State of Idaho a
nat the lands will be offered
which notice shall specify a
f time not less than 30 days in
during which citizens may
the proper office at Boise,
notice of their intention to
purchase all or part of the
s qualified preference-right
s.

Applications for purchase.

citizens who file a notice of
n in accordance with § 2546.1
he time period specified in the
ed notice or any amendment
will be granted by the author-
icer a period of time not less
days in duration in which to
duplicate with the Authorizing
of the Boise State Office, their
ions to purchase lands as pref-
ight claimants.

ery application must be accom-
by a filing fee of $10, which is
rnable.

o particular form is required
applications must be typewrit-
n legible handwriting and must
the following information:

e name and post office address
laimant.

e description and acreage of
lic lands claimed or desired.

he description of the lands
y the applicant, if any, adjoin-
ublic lands claimed or desired
nied by a certificate from the
ounty official or by an ab-
or by an attorney showing the
cquisition of the lands by the
and that the applicant owns the lands in fee simple as of the date of application.

(4) A statement showing that the claimant is a citizen of the United States, as defined in paragraph (4) of § 2540.0-3(f).

(5) A statement giving the basis for color of title or claim of riparian ownership.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation and occupancy, if any, of the lands applied for, including the nature, location, and date of such cultivation and occupancy.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands claimed.

(9) The names and addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the Act under which the application is made.

§ 2546.3 Payment and publication.

(a) Before lands may be sold to a qualified preference-right claimant, the claimant will be required to pay the purchase price of the lands and will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons having objections to file with the Authorizing officer of the State Office at Boise, Idaho, their objections to issuance of patent to the claimant. A protestant must serve on the claimant a copy of the objections and must furnish the Authorizing officer with evidence of such service.

(b) Among other things, the notice will describe the lands to be patented, state the purchase price for the lands and the reservations, if any, to be included in the patent to preserve public recreational values in the lands.

(c) The claimant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2546.4 Public auctions.

(a) The authorized officer may sell under the Act at public auction any lands for which preference-claimants do not qualify for patents under the regulations of § 2540.0-3(f) and subpart 2546.

(b) Lands will be sold under this section at not less than their appraised fair market value at the time and place and in the manner specified by the authorized officer in a public notice of the sale.

(c) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(d) A bid sent by mail must be received at the place and within the time specified in the public notice. Each such bid must clearly state (1) the name and address of the bidder and (2) the specified tract, as described in the notice for which the bid is made. The envelope must be noted as required by the notice.

(e) Each bid by mail must be accompanied by certified or cashier's check, post office money order or bank draft for the amount of the bid.

(f) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared the purchaser.

Subpart 2547—Omitted Lands: General

AUTHORITY: Secs. 211 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

SOURCE: 44 FR 41793, July 18, 1979, unless otherwise noted.

§ 2547.1 Qualifications of applicants.

(a) Any person authorized to hold title to land in the State may make application under section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721). For regulations on conveyances of omitted lands and unsurveyed islands to State and local governments see subpart 2742 of this title.

(b) The applicant shall be a citizen of the United States, or in the case of corporation, shall be organized under the laws of the United States or any State thereof.

(c) The applicant shall have occupied and developed the lands for a 5-year period prior to January 1, 1975.

[44 FR 41793, July 18, 1979; 44 FR 55876, Sept. 28, 1979]

§ 2547.2 Procedures; applications.

(a) The description of the omitted lands applied for shall be sufficiently complete to identify the location, boundary, and area of the land, including, if possible, the legal description of the land by section or fractional section, township, range, meridian and State.

(b) Each application shall be accompanied by a filing fee of $50 that is nonreturnable. The application shall be filed in accordance with the provisions of § 1821.2 of this title.

(c) No special form of application is required. The application shall be typewritten or in legible handwriting and shall contain the following information:

(1) The full name and legal mailing address of the applicant.

(2) The description and acreage of the public lands claimed.

(3) A statement showing that the applicant is qualified or authorized to hold title to land in the State, is a citizen of the United States, and in the case of a corporation, is organized under the laws of the United States or any State thereof.

(4) A statement describing how the applicant has satisfied the requirements of the statute.

(5) A statement describing the nature and extent of any developments made to the lands applied for and describing the period and type of any occupancy of the land.

(6) The names and legal mailing addresses of any known adverse claimants or occupants of the applied for lands.

(7) A citation of the Act under which the application is being made.

§ 2547.3 Price of land; payment.

(a) The land applied for shall be appraised for fair market value at the time of appraisal. However, in determi-

the price payable by the ap-
alue resulting from develop-
l occupation by the applicant
edecessors in interest shall be
from the appraised price.
e applicant shall also be re-
pay administrative costs, in-

cost of making the survey,
cost of appraisal, and
e cost of making the convey-

e applicant shall be required
payment of the sale price and
ative costs within the time
the requests for payment or
nsions granted thereto by the
d officer.

ublication and protests.

e applicant shall be required
n a notice of the application
ek for five consecutive weeks
lance with § 1824.3 of this
designated newspaper and in
ted form. All persons claim-
and adversely may file with
e Office of the Bureau of
nagement in which the lands
ed, their objections to issu-
atent under the application.
ant shall serve on the appli-
py of the objections and fur-
nce of such service.
applicant shall file at the ap-
BLM office a statement of
sher, accompanied by a copy
tice published, showing that
ation has been made for the
ime.

isposal considerations.

osal under this provision
e made until:
as been determined by the
officer that such convey-
the public interest and will
ctives which outweigh all
ectives and values which
served by retaining such
deral ownership.
relevant State government,
nment, and areawide plan-
y designated under section
Demonstration Cities and
n Act of 1966 (80 Stat.
, and/or Title IV of the
mental Cooperation Act of
at. 1098, 1103-4) have noti-

fied the authorized officer as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(3) The plat of survey has been officially filed.

§ 2547.6 Lands not subject to disposal under this subpart.

This subpart shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

§ 2547.7 Coordination with State and local governments.

At least 60 days prior to offering land for sale, the authorized officer shall notify the Governor of the State within which the lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which the lands are located that the lands are being offered for sale. The authorized officer shall also promptly notify such public officials of the issuance of the patent for such lands.

PART 2560—ALASKA OCCUPANCY AND USE

Subpart 2561—Native Allotments

Sec.
2561.0-2 Objectives.
2561.0-3 Authority.
2561.0-5 Definitions.
2561.0-8 Lands subject to allotment.
2561.1 Applications.
2561.2 Proof of use and occupancy.
2561.3 Effect of allotment.

Subpart 2562—Trade and Manufacturing Sites

2562.0-3 Authority.
2562.1 Initiation of claim.
2562.2 Qualifications of applicant.
2562.3 Applications.
2562.4 Survey.
2562.5 Publication and posting.
2562.6 Form of entry.
2562.7 Patent.

Sec.

Subpart 2563—Homesites or Headquarters

2563.0-2 Purpose.
2563.0-3 Authority.
2563.0-7 Cross references.
2563.1 Purchase of tracts not exceeding 5 acres, on showing as to employment or business (Act of March 3, 1927).
2563.1-1 Application.
2563.1-2 Approval.
2563.2 Purchase of tracts not exceeding 5 acres, without showing as to employment or business (Act of May 26, 1934).
2563.2-1 Procedures for initiating claim.

Subpart 2564—Native Townsites

2564.0-3 Authority.
2564.0-4 Responsibility.
2564.1 Application for restricted deed.
2564.2 No payment, publication or proof required on entry for native towns.
2564.3 Native towns occupied partly by white occupants.
2564.4 Provisions to be inserted in restricted deeds.
2564.5 Sale of land for which restricted deed was issued.
2564.6 Application for unrestricted deed.
2564.7 Determination of competency or noncompetency; issuance of unrestricted deed.

Subpart 2565—Non-native Townsites

2565.0-3 Authority.
2565.0-7 Cross reference.
2565.1 General requirements.
2565.2 Application; fees; contests and protests.
2565.3 Subdivision.
2565.4 Deeds.
2565.5 Sale of the land.
2565.6 Rights-of-way.
2565.7 Final report of trustee; disposition of unexpended moneys and unsold lots.
2565.8 Records to be kept by trustee.
2565.9 Disposition of records on completion of trust.

Subpart 2566—Alaska Railroad Townsites

2566.0-3 Authority.
2566.0-7 Cross references.
2566.1 General procedures.
2566.2 Public sale.

Subpart 2567—Alaska Homestead Settlement

2567.0-3 Authority.
2567.0-7 Cross references.
2567.0-8 Lands subject to settlement and homestead entry.
2567.1 Application.
2567.2 Homestead settlement entry.
2567.3 Acreage.
2567.4 Qualifications of entryman.
2567.5 Residence, cultivation requirements.
2567.6 Surveys.
2567.7 Proof.
2567.8 Loans.

Subpart 2561—Native Allotments

SOURCE: 35 FR 9597, June 13, 1970, unless otherwise noted.

§ 2561.0-2 Objectives.

It is the program of the Secretary of the Interior to enable individual natives of Alaska to acquire title to the lands they use and occupy and to protect the lands from the encroachment of others.

§ 2561.0-3 Authority.

The Act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 43 U.S.C. 270-1 to 270-3), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the Act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), of vacant, unappropriated, and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to any Indian, Aleut or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age.

§ 2561.0-5 Definitions.

As used in the regulations in this section.

(a) The term *substantially continuous use and occupancy* contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

(b) *Allotment* is an allocation to a Native of land of which he has made substantially continuous use and occupancy for a period of five years and

nall be deemed the *homestead*
llottee and his heirs in perpe-
nd shall be inalienable and
ole except as otherwise pro-
the Congress.
otment Act means the Act of
1906 (34 Stat. 197), as amend-
S.C. 357, 357a, 357b).

Lands subject to allotment.

Native may be granted a single
t of not to exceed 160 acres of
l the lands in an allotment
be contiguous but each sepa-
t of the allotment should be
ably compact form.
areas where the rectangular
attern is appropriate, an allot-
y be in terms of 40-acre legal
ons and survey lots on the
t substantially continuous use
pancy of a significant portion
mallest legal subdivision shall
entitle the applicant to the
division, absent conflicting

otments may be made in na-
rests if founded on occupancy
nd prior to the establishment
articular forest or if an au-
officer of the Department of
ire certifies that the land in
cation for allotment is chiefly
for agricultural or grazing

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d, it must be described as accurately as possible by metes and bounds and tied to natural objects. On unsurveyed lands, the application should be accompanied by a map or approved protracted survey diagram showing approximately the lands included in the application.

(d) An application for allotment shall be rejected unless the authorized officer of the Bureau of Indian Affairs certifies that the applicant is a native qualified to make application under the Allotment Act, that the applicant has occupied and posted the lands as stated in the application, and that the claim of the applicant does not infringe on other native claims or area of native community use.

(e) The filing of an acceptable application for a Native allotment will segregate the lands. Thereafter, subsequent conflicting applications for such lands shall be rejected, except when the conflicting application is made for the conveyance of lands pursuant to any provision of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

(f) By the filing of an application for allotment the applicant acquires no rights except as provided in paragraph (e) of this section. If the applicant does not submit the required proof within six years of the filing of his application in the proper office, his application for allotment will terminate without affecting the rights he gained by virtue of his occupancy of the land or his right to make another application.

[35 FR 9597, June 13, 1970, as amended at 39 FR 34542, Sept. 26, 1974]

§ 2561.2 Proof of use and occupancy.

(a) An allotment will not be made until the lands are surveyed by the Bureau of Land Management, and until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. Such proof shall be made on a form approved by the Director, Bureau of Land Management, and filed in the proper land office. If made by the applicant, it must be signed by him, but if he is unable to write his name, his mark or thumb print shall be impressed on the statement and witnessed by two persons. This proof may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or may be made at any time within six years after the filing of the application when the requirements have been met.

(b) [Reserved]

§ 2561.3 Effect of allotment.

(a) Land allotted under the Act is the property of the allottee and his heirs in perpetuity, and is inalienable and nontaxable. However, a native of Alaska who received an allotment under the Act, or his heirs, may with the approval of the Secretary of the Interior or his authorized representative, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is a native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

(b) Application by an allottee or his heirs for approval to convey title to land allotted under the Allotment Act shall be filed with the appropriate officer of the Bureau of Indian Affairs.

Subpart 2562—Trade and Manufacturing Sites

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

SOURCE: 35 FR 9598, June 13, 1970, unless otherwise noted.

§ 2562.0–3 Authority.

Section 10 of the Act of May 14, 1898 (30 Stat. 413, as amended August 23, 1958 (72 Stat. 730; 43 U.S.C. 687a), authorizes the sale at the rate of $2.50 per acre of not exceeding 80 acres of land in Alaska possessed and occupied in good faith as a trade and manufacturing site. The lands must be nonmineral in character, except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the Act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), as amended, and the regulations of § 2093.4 of this chapter.

§ 2562.1 Initiation of claim.

(a) *Notice.* Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the Act of May 14, 1898 by the occupation of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim for recordation in the proper office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, association, or corporation, the claimant must file notice of the claim in the proper office, within 90 days from that date.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain:

(1) The name and address of the claimant, (2) age and citizenship, (3) date of occupancy, and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. The notice must designate the kind of trade, manufacture, or other productive industry in connection with which the site is maintained or desired.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper office, or application to purchase, whichever is earlier.

(d) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the proper office for recording, because the land is not subject to the form of disposition specified in the notice.

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§ 2562.2 Qualifications of applicant.

An application must show that the applicant is a citizen of the United States and 21 years of age, and that he has not theretofore applied for land as a trade and manufacturing site. If such site has been applied for and the application not completed, the facts must be shown. If the application is made for an association of citizens or a corporation, the qualifications of each member of the organization must be shown. In the case of a corporation, proof of incorporation must be established by the certificate of the officer having custody of the records of incorporation at the place of its formation and it must be shown that the corporation is authorized to hold land in Alaska.

§ 2562.3 Applications.

(a) *Execution.* Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper office. It need not be sworn to, but it must be signed by the applicant and must be corroborated by the statements of two persons.

(b) *Fees.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Time for filing.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

(d) *Contents.* The application to enter must show:

(1) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the Act of May 14, 1898 (30 Stat. 413; 43 U.S.C. 687a).

(2) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(3) That the land does not abut more than 80 rods of navigable water.

(4) That the land is not included within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, in accordance with § 2311.2(a) of this chapter.

(5) That no part of the land is valuable for mineral deposits other than coal, oil, or gas, and that at the date of location no part of the land was claimed under the mining laws.

(e) *Description of land.* If the land be surveyed, it must be described in the application according to legal subdivisions of the public-land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without survey.

§ 2562.4 Survey.

(a) If the land applied for be unsurveyed and no objection to its survey is known to the authorizing officer, he will furnish the applicant with a certificate stating the facts, and, after receiving such certificate, the applicant may make application to the State Director for the survey of the land. Upon receipt of an application, the State Director will, if conditions make such procedure practicable and no objection is shown by his records, furnish the applicant with an estimate of the cost of field and office work, and upon receipt of the deposit required will issue appropriate instructions for the survey of the claim, such survey to be made not later than the next surveying season. The sum so deposited by the applicant for survey will be deemed an appropriation thereof and will be held to be expended in the payment of the cost of the survey, including field and office work, and upon the acceptance of the survey any excess over the cost shall be repaid to the depositor or his legal representative.

(b) In case it is decided that by reason of the inaccessibility of the locality embraced in an application for the survey, or by reason of other conditions, it will result to the advantage of the Government or claimant to have the survey executed by a deputy surveyor, the State Director will deliver an order to the applicant for such survey, which will be sufficient authority for any deputy surveyor to make a survey of the claim.

(c) In the latter contingency the survey must be made at the expense of the applicant, and no right will be recognized as initiated by such application unless actual work on the survey is begun and carried to completion without unnecessary delay.

§ 2562.5 Publication and posting.

The instructions given in subpart 1824 of this chapter, relative to publication and posting.

§ 2562.6 Form of entry.

Claims initiated by occupancy after survey must conform thereto in occupation and application, but if the public surveys are extended over the lands after occupancy and prior to application, the claim may be presented in conformity with such surveys, or, at the election of the applicant, a special survey may be had.

§ 2562.7 Patent.

The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and patent issued upon payment for the land at the rate of $2.50 per acre, and in the absence of objections shown by his records.

Subpart 2563—Homesites or Headquarters

SOURCE: 35 FR 9599, June 13, 1970, unless otherwise noted.

§ 2563.0-2 Purpose.

(a) *Act of March 3, 1927.* The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the State, not exceeding 5 acres, as homesteads or headquarters.

(b) [Reserved]

§ 2563.0-3 Authority.

(a) The Act of March 3, 1927 (44 Stat. 1364; 43 U.S.C. 687a), as amended, authorizes the sale as a homestead or headquarters of not to exceed five acres of unreserved public lands in Alaska at the rate of $2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States, association of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska. The lands must be nonmineral in character except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the provisions of the Act of March 8, 1922 (42 Stat. 415, 43 U.S.C. 270-11, 270-12) as amended.

(b) The Act of May 26, 1934 (48 Stat. 809; 43 U.S.C. 687a) amended section 10 of the Act of May 14, 1898 (30 Stat. 413), as amended by the Act of March 3, 1927 (44 Stat. 1364), so as to provide that any citizen, after occupying land of the character described in said section of a homestead or headquarters in a habitable house not less than 5 months each year for 3 years, may purchase such tract, not exceeding 5 acres, in a reasonably compact form without a showing as to his employment or business, upon the payment of $2.50 per acre, the minimum payment for any one tract to be $10.

§ 2563.0-7 Cross references.

See the following parts in this subchapter: for Indian and Eskimo allotments, part 2530; for mining claims subpart 3826; for school indemnity selections, subpart 2627; for shore space subpart 2094 for trade and manufacturing sites, subpart 2562.

§ 2563.1 Purchase of tracts not exceeding 5 acres, on showing as to employment or business (Act of March 3, 1927).

(a) *Notice of initiation of claim.* A notice of the initiation of a claim under the Act of March 3, 1927, must designate the kind of trade, manufacture, or other productive industry in connection with which the claim is maintained or desired, and identify its ownership. The procedure as to notices will be governed in other respects by the provisions of § 2563.2-1(a) to (d).

(b) [Reserved]

§ 2563.1-1 Application.

(a) *Form and contents of applications.* Applications under the Act of March 3, 1927, must be filed in duplicate in the proper office for the district in which the land is situated, and the claim must be in reasonably compact form. An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) The age and citizenship of applicant.

(2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(3) The date when the land was first occupied as a homestead or headquarters.

(4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

(6) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any natives of Alaska, or occupied as a town site or missionary station or reserved from sale, and that the tract does not include improvements made by or in possession of another person, association, or corporation.

(7) That the land is not included within an area which is reserved because of springs thereon. All facts as to medicinal or other springs must be stated, in accordance with § 2311.2(a).

(8) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(9) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing and the application will be amended accordingly. Where a supplemental plat is required, to provide a proper description, it will be prepared at the time of approval of the application.

(10) If the land is unsurveyed, the application must be accompanied by a petition for survey, describing the tract applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(b) *Filing fee.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

§ 2563.1-2 Approval.

Care will be taken in all cases before patent issues to see that the lands applied for are used for the purposes contemplated by the said Act of March 3, 1927, and that they are not used for any purpose inconsistent therewith.

§ 2563.2 Purchase of tracts not exceeding 5 acres, without showing as to employment or business (Act of May 26, 1934).

§ 2563.2-1 Procedures for initiating claim.

(a) *Who must file.* Any qualified person initiating a claim under the Act of May 26, 1934, must file notice of the claim for recordation in the proper office for the district in which the land is situated, within 90 days after such initiation.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of settlement and occupancy, and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper office, or application to purchase, whichever is earlier.

(d) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the proper office for recording because the land is not subject to the form of disposition specified in the notice.

(e) *Form and contents of application.* Applications under the Act of May 26, 1934, must be filed in duplicate, if for surveyed land, and in triplicate, if for unsurveyed land, in the proper office for the district within which the land is situated.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) Full name, post office address and age of applicant.

(2) Whether the applicant is a native-born or naturalized citizen of the United States, and if naturalized, evidence of such naturalization must be furnished.

(3) A description of the habitable house on the land, the date when it was placed on the land, and the dates each year from which and to which the applicant has resided in such house.

(4) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any native of Alaska, or occupied as a townsite, or missionary station, or reserved from sale, and that the tract does not include improvements made by or in the possession of any other person, association, or corporation.

(5) That the land is not included within an area which is reserved because of hot, medicinal or other springs, as explained in § 2311.2(a) of this chapter. If there be any such springs upon or adjacent to the land on account of which the land is reserved, the facts relative thereto must be set forth in full.

(6) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(7) That the applicant has not theretofore applied for land under said act, or if he has previously purchased a tract he should make a full showing as to the former purchase and the necessity for the second application.

(8) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing, and the application will be amended accordingly. Where a supplemental plat is required to provide a proper description, it will be prepared at the time of approval of the application.

(9) All applications for unsurveyed land must be accompanied by a petition for survey, describing the land applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(f) *Filing fee.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

Subpart 2564—Native Townsites

SOURCE: 35 FR 9601, June 13, 1970, unless otherwise noted.

§ 2564.0-3 Authority.

The Act of May 25, 1926, (44 Stat. 629; 43 U.S.C. 733-736) provides for the townsite survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee townsites in Alaska and for the survey and disposal of the lands occupied as native towns or villages. The Act of February 26, 1948 (62 Stat. 35; 43 U.S.C. 737), provides for the issuance of an unrestricted deed to any competent native for a tract of land claimed and occupied by him within any such trustee townsite.

§ 2564.0-4 Responsibility.

(a) *Administration of Indian possessions in trustee towns.* As to Indian possessions in trustee townsites in Alaska established under authority of section 11 of the Act of March 3, 1891 (26 Stat. 1009; 43 U.S.C. 732), and for which the townsite trustee has closed his accounts and been discharged as trustee, and as to such possessions in other trustee townsites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the Act of May 25, 1926.

(b) *Administration of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said Act of May 25, 1926 (44 Stat. 630; 43 U.S.C. 735), will take such action as may be necessary to accomplish the objects sought to be accomplished by that section.

§ 2564.1 Application for restricted deed.

A native Indian or Eskimo of Alaska who occupies and claims a tract of land in a trustee townsite and who desires to obtain a restricted deed for such tract should file application therefor on a form approved by the Director, with the townsite trustee.

§ 2564.2 No payment, publication or proof required on entry for native towns.

In connection with the entry of lands as a native town or village under section 3 of the said Act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee townsites will not be required.

§ 2564.3 Native towns occupied partly by white occupants.

Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the Act of March 3, 1891 (26 Stat. 1095, 1099), and the Act of May 25, 1926 (44 Stat. 629).

§ 2564.4 Provisions to be inserted in restricted deeds.

The townsite trustee will note a proper reference to the Act of May 25, 1926, on each deed which is issued under authority of that act and each such deed shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior or his authorized representative, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the townsite have been extended upon and across the tract, that there is reserved to the townsite the area covered by such streets and alleys as extended. The deed shall further provide that the approval by the Secretary of the Interior or his authorized representative of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

§ 2564.5 Sale of land for which restricted deed was issued.

When a native possessing a restricted deed for land in a trustee townsite issued under authority of the Act of May 25, 1926 (44 Stat. 629; 43 U.S.C. 733-736), desires to sell the land, he should execute a deed on a form approved by the Director, prepared for the approval of the Secretary of the Interior, or his authorized representative, and send it to the townsite trustee in Alaska. The townsite trustee will forward the deed to the Area Director of the Bureau of Indian Affairs who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Bureau of Indian Affairs, through the townsite trustee to the vendor. In the event the Area Director determines that the deed shall not be approved, he shall so inform the native possessing the restricted deed, who shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within sixty days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

§ 2564.6 Application for unrestricted deed.

Any Alaska native who claims and occupies a tract of land in a trustee townsite and is the owner of land under a restricted deed issued under the Act of May 25, 1926 (44 Stat. 629; 43 U.S.C. 732-737) may file an application for an unrestricted deed pursuant to the Act of February 26, 1948 (62 Stat. 35; 43 U.S.C. 732-737), with the townsite trustee. The application must be in writing and must contain a description of the land claimed and information regarding the competency of the applicant. It must also contain evidence substantiating the claim and occupancy of the applicant, except when the applicant has been issued a restricted deed for the land. A duplicate copy of the application must be submitted by the applicant to the Area Director of the Bureau of Indian Affairs.

§ 2564.7 Determination of competency or noncompetency; issuance of unrestricted deed.

(a) Upon a determination by the Bureau of Indian Affairs that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the townsite trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the townsite trustee shall be subject to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with part 4 of 43 CFR Subtitle A.

(b) In the event the Area Director determines that the applicant is not competent to manage his own affairs, he shall so inform the applicant, and such applicant shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within 60 days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(c) Except as provided in this section, the townsite trustee shall not issue other than restricted deeds to Indian or other Alaska natives.

(43 U.S.C. 733-735, 737)

[35 FR 9601, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

Subpart 2565—Non-native Townsites

SOURCE: 35 FR 9601, June 13, 1970, unless otherwise noted.

§ 2565.0-3 Authority.

The entry of public lands in Alaska for townsite purposes, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, is authorized by section 11 of the

Act of March 3, 1891 (sec. 11, 26 Stat. 1099; 43 U.S.C. 732).

§ 2565.0-7 Cross reference.

Townsites in Alaska may be reserved by the President and sold as provided for in sections 2380 and 2381 of the Revised Statutes; 43 U.S.C. 711, 712. The regulations governing these townsites are contained in §§ 2760.0-3 and 2761.3.

§ 2565.1 General requirements.

(a) *Survey of exterior lines; exclusions from townsite survey.* If the land is unsurveyed the occupants must by application to the State Director, obtain a survey of the exterior lines of the townsite which will be made at Government expense. There must be excluded from the tract to be surveyed and entered for the townsite any lands set aside by the district court under section 31 of the Act of June 6, 1900 (31 Stat. 332; 48 U.S.C. 40), for use as jail and courthouse sites, also all lands needed for Government purposes or use, together with any existing valid claim initiated under Russian rule.

(b) *Petition for trustee and for survey of lands into lots, blocks, etc.* When the survey of the exterior lines has been approved, or if the townsite is on surveyed land, a petition, signed by a majority of occupants of the land, will be filed in the proper office requesting the appointment of trustee and the survey of the townsite into lots, blocks, and municipal reservations for public use, the expense thereof to be paid from assessments upon the lots, as provided in § 2565.3(b) of this part.

(c) *Designation of trustee; payment required; area enterable.* If the petition be found sufficient, the Secretary the Interior will designate a trustee make entry of the townsite, payment for which must be made at the e of $1.25 per acre. If there are less an 100 inhabitants the area of the vnsite is limited to 160 acres; if 100 d less than 200, to 320 acres; if more n 200, to 640 acres, this being the ximum area allowed by the statute.

§ 2565.2 Application; fees; contests and protests.

(a) *Filing of application; publication and posting; submission of proof.* The trustee will file his application and notice of intention to make proof, and thereupon the authorizing officer will issue the usual notice of making proof, to be posted and published at the trustee's expense, for the time and in the manner as in other cases provided, and proof must be made showing occupancy of the tract, number of inhabitants thereon, character of the land, extent, value, and character of improvements, and that the townsite does not contain any land occupied by the United States for school or other purposes or land occupied under any existing valid claim initiated under Russian rule.

(b) *Application service fee.* The trustee's application shall be accompanied by $10 application service fee which shall not be returnable.

(c) *Expense money to be advanced by lot occupants.* The occupants will advance a sufficient amount of money to pay for the land and the expenses incident to the entry to be refunded to them when realized from lot assessments.

(d) *Contests and protests.* Applications for entry will be subject to contest or protest as in other cases.

§ 2565.3 Subdivision.

(a) *Subdivision of land and payment therefore.* After the entry is made, the townsite will be subdivided by the United States into blocks, lots, streets, alleys, and municipal public reservations. The expense of such survey will be paid from the appropriation for surveys in Alaska reimbursable from the lot assessments collected.

(b) *Lot assessments.* The trustee will assess against each lot, according to area, its share of the cost of the subdivisional survey. The trustee will make a valuation of each occupied or improved lot in the townsite and assess upon such lots, according to their value, such rate and sum in addition to the cost of their share of the survey as will be necessary to pay all other expenses incident to the execution of his trust which have accrued up to the time of such levy. More than one assessment may be made if necessary to effect the purpose of the Act of March 3, 1891, and this section.

(c) *Award and disposition of lots after subdivisional survey.* On the acceptance of the plat by the Bureau of Land Management, the trustee will publish a notice that he will, at the end of 30 days from the date thereof, proceed to award the lots applied for, and that all lots for which no applications are filed within 120 days from the date of said notice will be subject to disposition to the highest bidder at public sale. Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional townsite survey or their assigns thereafter, are entitled to the allotments herein provided. Minority and coverture are not disabilities.

§ 2565.4 Deeds.

(a) *Applications for deeds.* Claimants should file their applications for deeds, setting forth the grounds of their claims for each lot applied for, which should be corroborated by two witnesses.

(b) *Issuance of deeds; procedure on conflicting applications.* (1) Upon receipt of the patent and payment of the assessments the trustee will issue deeds for the lots. The deeds will be acknowledged before an officer duly authorized to take acknowledgements of deeds at the cost of the grantee. In case of conflicting applications for lots, the trustee, if he considers it necessary, may order a hearing to be conducted in accordance with the part 1850 of this chapter.

(2) No deed will be issued for any lot involved in a contest until the case has been finally closed. Appeals from any decision of the trustee or from decisions of the Bureau of Land Management may be taken in the manner provided by part 1840 of this chapter.

§ 2565.5 Sale of the land.

(a) *Public sale of unclaimed lots.* After deeds have been issued to the parties entitled thereto the trustee will publish or post notice that he will sell, at a designated place in the town and at a time named, to be not less than 30 days from date, at public outcry, for cash, to the highest bidder, all lots and tracts remaining unoccupied and unclaimed at the date of the approval of final subdivisional townsite survey, and all lots and tracts claimed and awarded on which the assessments have not been paid at the date of such sale. The notice shall contain a description of the lots and tracts to be sold, made in two separate lists, one containing the lots and tracts unclaimed at the date of the approval of final subdivisional townsite survey and the other the lots and tracts claimed and awarded on which the assessments have not been paid. Should any delinquent allottee, prior to the sale of the lot claimed by him, pay the assessments thereon, together with the pro rata cost of the publication and the cost of acknowledging deed, a deed will be issued to him for such lot and the lot will not be offered at public sale. Where notice by publication is deemed advisable the notice will be published once a week for 5 consecutive weeks in accordance with § 1824.3 of this chapter prior to the date of sale, and in any event copies of such notice shall be posted in three conspicuous places within the townsite. Each lot must be sold at a fair price, to be determined by the trustee, and he is authorized to reject any and all bids. Lots remaining unsold at the close of the public sale in an unincorporated town may again be offered at a fair price if a sufficient demand appears therefor.

(b) *Sales to Federal, State and local governmental agencies.* (1) Any lot or tract in the townsite which is subject to sale to the highest bidder by the trustee pursuant to this section may in lieu of disposition at public sale be sold by the trustee at a fair value to be fixed by him to any Federal or State agency or instrumentality or to any local governmental agency or instrumentality of the State for use for public purposes.

(2) All conveyances under this section shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances, including, where he deems proper, a provision for reversion of title to the trustee or his successor in

interest. Any such provision for reversion of title, however, shall by its terms cease to be in effect 25 years after the conveyance.

(3) Conveyances under this section for lands within any incorporated city, town, village, or municipality may be made only after the proposed conveyance has received the approval of the city, town, or village council, or of the local official designated by such council. Such conveyances for lands within any unincorporated city, town, village or municipality may be made only after notice of the proposed conveyance, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision of the trustee which is adverse to a protest will be subject to the right of appeal under part 1840 of this chapter. Upon filing of an appeal pursuant to that part, action by the trustee on the conveyance will be suspended pending final decision on the appeal.

§ 2565.6 Rights-of-way.

(a) Notwithstanding any other provisions of this part, the trustee is authorized to grant rights-of-way for public purposes across any unentered lands within the townsite. This authority is expressly limited to grants of rights-of-way to cities, towns, villages, and municipalities, and to school, utility, and other types of improvement districts, and to persons, associations, companies, and corporations engaged in furnishing utility services to the general public, and to the United States, any Federal or State agency or instrumentality for use for public purposes.

(b) The trustee may in his discretion fix a reasonable charge for any grant under this authority to private persons, associations, companies and corporations, and to Federal and State agencies and instrumentalities, which charge shall be a lump sum. All grants shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances. No grants of rights-of-way under this authority shall be made across or upon lands on which prior rights of occupancy or entry have vested under the law.

(c) Grants of rights-of-way under this section to Federal and State agencies and instrumentalities to private persons, associations, companies, or corporations affecting lands within any incorporated city, town, village, or municipality, may be made only after the proposed grant has received the approval of the city, town, or village council, or, where applicable, the municipal board or commission having authority under state law to approve rights-of-way for local public utility purposes. Grants of such rights-of-way to Federal and State agencies and instrumentalities and to private persons, associations, companies, or corporations within unincorporated cities, towns, villages, or municipalities may be made only after notice of the proposed grant, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision by the trustee which is adverse to a protest will be subject to the right of appeal under part 1840 of this chapter. Upon the filing of an appeal, action by the trustee on the application for right-of-way will be suspended pending final decision on the appeal.

§ 2565.7 Final report of trustee; disposition of unexpended moneys and unsold lots.

After the disposal of a sufficient number of lots to pay all expenses incident to the execution of the trust, including the cost of the subdivisional survey, the trustee will make and transmit to the Bureau of Land Management his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipality in trust for the public purposes for which they were reserved.

§ 2565.8 Records to be kept by trustee.

The trustee shall keep a tract book of the lots and blocks, a record of the deeds issued, a contest docket, and a book of receipts and disbursements.

§ 2565.9 Disposition of records on completion of trust.

The trustee's duties having been completed, the books of accounts of all his receipts and expenditures, together with a record of his proceedings as provided in § 2565.8 of this part with all papers, other books, and everything pertaining to such townsite in his possession and all evidence of his official acts shall be transmitted to the Bureau of Land Management to become a part of the records thereof, excepting from such papers, however, in case the town is incorporated, the subdivisional plat of the townsite, which he will deliver to the municipal authorities of the town, together with a copy of the townsite tract book or books, taking a receipt therefore to be transmitted to the Bureau of Land Management.

(Sec. 11, 26 Stat. 1099; 48 U.S.C. 355)

Subpart 2566—Alaska Railroad Townsites

SOURCE: 35 FR 9603, June 13, 1970, unless otherwise noted.

§ 2566.0-3 Authority.

It is hereby ordered that the administration of that portion of the Act of March 12, 1914 (38 Stat. 305; 43 U.S.C. 975, 975a-975g) relating to the withdrawal, location and disposition of townsites shall be in accordance with the following regulations and provisions.

(a) *Orders revoked.* All Executive orders heretofore issued for the disposition of townsites along the Government railroads in Alaska are hereby revoked so far as they conflict with §§ 2566.1 and 2566.2. This order is intended to take the place of all other orders making provisions for the sale and disposal of lots in said townsites along Government railroads in Alaska under the provisions of said Act.

(b) *Amendments*—(1) *Executive Orders 3529 and 5136.* Sections 2566.1 and 2566.2 are amended by E.O. 3529, Aug. 9, 1921 and E.O. 5136, June 12, 1929.

(2) The designation of the *Alaskan Engineering Commission* has been changed to *The Alaska Railroad.* All matters which formerly were under the control of the chairman of said commission now are under the supervision of the general manager of the said railroad. The functions formerly exercised by the Commissioner of the General Land Office have been transferred to the Director, Bureau of Land Management.

(3) Due to the change in organization, plats of Alaska Railroad townsites are not approved by an official of the Alaska Railroad.

(4) The State Director in Alaska has been designated as Superintendent of Sales of Alaska Railroad townsites.

(c) *Executive Order 5136.* (1) It is ordered that Executive Order 3489, issued June 10, 1921, containing the Alaska Railroad Townsite Regulations, is hereby amended to authorize the Secretary of the Interior to reappraise and sell the unimproved lots in Nenana Townsite, Alaska, belonging to the United States, and to readjust the assessments levied against them for the improvement of streets, sidewalks and alleys, and for the promotion of sanitation and fire protection by the Alaska Railroad prior to August 31, 1921.

(2) As to the lots within said townsite which have been forfeited for failure to pay such assessments, upon which valuable improvements have been placed, the provisions of said order regarding the collection of the unpaid assessments remain effective.

(3) This order shall continue in full force and effect unless and until re

voked by the President or by Act of Congress.

(Sec. 24, 26 Stat. 1103; as amended, sec. 1, 36 Stat. 347; sec. 1, 38 Stat. 305; sec. 11, 39 Stat. 665; 16 U.S.C. 471, 43 U.S.C. 141, 43 U.S.C. 975f, 43 U.S.C. 301)

§ 2566.0-7 Cross references.

(a) Sales of railroad townsites in Alaska, provided for by Executive Order 3489 of June 10, 1921, §§ 2566.1(a) to (f) and 2566.0-3(a), will be made by the authorized officer in Alaska, as superintendent of sales of railroad townsites in accordance with townsite regulations contained in §§ 2760.0-3 to 2761.2(e) so far as those regulations are applicable.

(b) For surveys, Alaska, see part 9180 of this chapter. For townsites, Alaska, see § 2565.0-7.

§ 2566.1 General procedures.

(a) *Reservations.* The Alaska Railroad will file with the Secretary of the Interior, when deemed necessary, its recommendations for the reservation of such areas as in its opinion may be needed for townsite purposes. The Secretary of the Interior will thereupon transmit such recommendations to the President with his objections thereto or concurrence therewith. If approved by the President, the reservation will be made by Executive order.

(b) *Survey.* When in the opinion of the Secretary of the Interior the public interests require a survey of any such reservation, he shall cause to be set aside such portions thereof for railroad purposes as may be selected by the Alaska Railroad, and cause the remainder, or any part thereof, to be surveyed into urban or suburban blocks and lots of suitable size, and into reservations for parks, schools, and other public purposes and for Government use. Highways should be laid out, where practicable, along all shore lines, and sufficient land for docks and wharf purposes along such shore lines should be reserved in such places as there is any apparent necessity therefor. The survey will be made under the supervision of the Bureau of Land Management.

(c) *Preference right.* Any person residing in a reserved townsite at the time of the subdivisional survey thereof in the field and owning and having valuable and permanent improvements thereon, may, in the discretion of the Secretary of the Interior, be granted a preference right of entry, of not exceeding two lots on which he may have such improvements by paying the appraised price fixed by the superintendent of sale, under such regulations as the Secretary of the Interior may prescribe. Preference right proof and entry, when granted, must be made prior to the date of the public sale.

§ 2566.2 Public sale.

(a) *Generally.* The unreserved and unsold lots will be offered at public sale to the highest bidder at such time and place, and after such publication of notice, if any, as the Secretary of the Interior may direct.

(b) *Superintendent's authority.* Under the supervision of the Secretary of the Interior the superintendent of the sale will be, and he is hereby, authorized to make all appraisements of lots and at any time to reappraise any lot which in his judgment is not appraised at the proper amount, or to fix a minimum price for any lot below which it may not be sold, and he may adjourn, or postpone the sale of any lots to such time and place as he may deem proper.

(c) *Manner and terms of public sale.* (1) The Secretary of the Interior shall by regulations prescribe the manner of conducting the public sale, the terms thereof and forms therefor and he may prescribe what failures in payment will subject the bidder or purchaser to a forfeiture of his bid or right to the lot claimed and money paid thereon. The superintendent of sale will at the completion of the public sale deposit with the receiver of the proper local land office the money received and file with its officers the papers deposited with him by said bidder, together with his certificate as to successful bidder.

(2) If it be deemed advisable, the Director, Bureau of Land Management may direct the receiver of public moneys of the proper district to attend sales herein provided for in

which event the cash payment required shall be paid to the said receiver.

Subpart 2567—Alaska Homestead Settlement

Source: 35 FR 9604, June 13, 1970, unless otherwise noted.

§ 2567.0-3 Authority.

The homestead laws were extended to Alaska by the Act of May 14, 1898 (30 Stat. 409; 43 U.S.C. 270), which was amended by the Acts of March 3, 1903 (32 Stat. 1028; 43 U.S.C. 270), July 8, 1916 (39 Stat. 352; 43 U.S.C. 270-8 to 270-10, 270-14), June 28, 1918 (40 Stat. 632; 43 U.S.C. 270-8 to 270-10, 270-14), April 13, 1926 (44 Stat. 243; 43 U.S.C. 270-15—270-17), and July 11, 1956 (70 Stat. 528; 43 U.S.C. 270-7 and 270-10).

§ 2567.0-7 Cross references.

For Indian and Eskimo allotments, subpart 2561, for school indemnity selections subpart 2627; for shore space, subpart 2094; for soldier's additional rights, subpart 2616; for trade and manufacturing sites, subpart 2562.

§ 2567.0-8 Lands subject to settlement and homestead entry.

All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

§ 2567.1 Application.

(a) *Form.* Application to make homestead entry for lands in Alaska should be presented on a form approved by the Director, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U.S.C. 161, 171).

(b) *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(1) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived or should be waived. (See § 2094.2 of this subchapter.)

(2) That the land is not within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 2311.2(a) of this chapter.

(c) *Contents.* (1) A homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

(2) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

(d) *Service charges.* (1) When a homesteader applies to make entry he must pay an application nonrefundable service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands pursuant to the Act of May 14, 1880 (21 Stat. 143; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the authorizing officer, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof shall be accepted or approved until all charges have been paid.

(2) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

§ 2567.2 Homestead settlement entry.

(a) *Form of settlement on unsurveyed land.* A settlement claim on unsurveyed land must be rectangular in form, not more than 1 mile in length, located by lines running north and south, according to the true meridian, the four corners being marked by permanent monuments, unless a departure from such restrictions is authorized by the Act of April 13, 1926 (44 Stat. 243; 43 U.S.C. 270-15 to 270-17). The said act permits a departure from the restrictions mentioned where by reason of local or topographic conditions it is not feasible or economical to include in rectangular form with cardinal boundaries the lands desired. Under the conditions recited in the law as justifying such departure, it will be sufficient that the claims shall be compact and approximately rectangular in form and where a departure from cardinal courses in the direction of boundary lines is necessary in order to include the lands desired there will be no restriction as to the amount of such departure. The modification of former practice in the matter of form and direction of boundaries is not to be construed, however, as authorizing the lines of the claims to be unduly extended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

(b) *Notice of settlement.* (1) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the proper office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation, or application to make homestead entry, in the proper office for the district in which the land is located within 90 days after settlement.

(2) The notice must be filed on a form approved by the Director, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (i) The name and address of the settler, (ii) age and citizenship; (iii) date of settlement, and (iv) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(3) Unless a notice of the claim is filed within the time prescribed in paragraphs (b)(1) and (2) of this section, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

(c) *Recordation fee.* The notice of settlement claim must be accompanied by a remittance of $10.00 which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the proper office for recording because the land is not subject to homestead settlement.

(d) *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (1) A settler on unsurveyed land is required to mark the claim by permanent monuments at each corner, in order to establish the boundaries thereof.

(2) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

(e) *Law under which homestead must be perfected.* All homestead claims in Alaska must be perfected under and in accordance with the provisions of the 3-year homestead law of

June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), and regulations thereunder.

(Sec. 1, 30 Stat. 409, as amended; 48 U.S.C. 371)

§ 2567.3 Acreage.

(a) *Area subject to appropriation.* A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

(b) *Limitations.* The Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

(43 U.S.C. 270)

§ 2567.4 Qualifications of entryman.

(a) *Qualifications required.* Any person who is qualified to make an ordinary homestead entry in the United States under section 2289, Revised Statutes (43 U.S.C. 161, 171), is qualified to make homestead entry in Alaska, and a former homestead entry outside of Alaska does not bar the claimant's right to make entry in that State for not exceeding 160 acres.

(b) *Second entries.* No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry, or made an allowable homestead application or filed a location notice of settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) explained in § 2513.1 (a) to (d) of this chapter.

(c) *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the Act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or for noncontiguous land under the Act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214) for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 2512.1 and 2512.2 of this chapter. An additional entry under the Act of April 28, 1904 is not subject to commutation.

(Sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 270)

§ 2567.5 Residence, cultivation requirements.

(a) *Residence*—(1) *Establishment.* Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than 6 months may be allowed upon application duly filed, in which the entryman shows by his own statement, and that of two witnesses, that residence could not be established within the first 6 months, for climatic reasons, or on account of sickness, or other unavoidable cause.

(2) *Length.* A homestead entryman must show residence upon his claim for at least 3 years; however, he is entitled to absent himself during each year for not more than two periods making up an aggregate of 5 months giving written notice to the proper

fice of the time of leaving the home-
ad and returning thereto.
(3) *Leave of absence.* A leave of ab-
nce for 1 year or less may be granted
the authorizing officer to the
mesteader who has established
tual residence on the land where
ilure or destruction of crops, sick-
ss, or other unavoidable casualty
s prevented him from supporting
mself and those dependent upon
m by cultivation of the land.
(b) *Cultivation.* There must be
own also cultivation of one-six-
enth of the area of the claim during
e second year of the entry and of
e-eighth during the third year and
til the submission of proof, unless
e requirements in this respect be re-
ced upon application duly filed. Cul-
ation, which must consist of break-
g of the soil, planting or seeding, and
lage for a crop other than native
asses, must include such acts and be
ne in such manner as to be reason-
ly calculated to produce profitable
sults.
(c) *Habitable house.* The law pro-
des also that the entryman must
ve a habitable house upon the land
the time proof is submitted.
(d) *Commutation of entries.* To the
tent of not more than 160 acres an
try may be *commuted* after not less
an 14 months' residence upon the
d, cultivation of the area commuted
the extent required under the ordi-
ry homestead laws and payment of
25 per acre; that is, the claimant
st show the existence of a habitable
se on the land at the time of final
mutation proof, that residence for
period of not less than 14 months
actual and substantially continu-
, and cultivation of one-sixteenth
he area during the second year of
entry, and, if commutation proof
ubmitted after the second entry
, one-eighth of the area of the
d entry year and until the submis-
of final commutation proof. In
cases the homesteader is entitled
5 months' leave of absence in each
, but cannot have credit as resi-
e for such period, since actual
nce on the land for not less than
onths is required. However, an ad-
al entry under the Act of April
28, 1904 (33 Stat. 527; 43 U.S.C. 213), is not subject to commutation.

§ 2567.6 Surveys.

(a) *Without expense to settler.* The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the proper office, an application to enter on a form approved by the Director and acceptable final or commuted homestead proof as required by § 2567.7(a).

(b) *At expense of settler.* A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

(c) *Application to enter land included in special survey.* After a special survey has been made, in accordance with paragraph (b) of this section, application to enter should be made as in the case of other settlements on surveyed lands.

§ 2567.7 Proof.

(a) *Submission.* (1) Proof may be submitted without previous notice of intention by publication.

(2) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the authorizing officer of the proper office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the proper office.

(3) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

(b) *Publication and posting.* (1) Where a special survey has been made, the notice of proof must give the survey number of the land, and it must be published once a week for nine consecutive weeks, in accordance with § 1824.3 of this chapter, at the expense of the applicant, in a newspaper designated by the authorizing officer as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(2) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 1824.3 of this chapter. The authorizing officer must cause a copy of the notice to be posted in his office during the entire period of publication.

(c) *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the State transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

(d) *Adverse claim.* (1) In conformity with provision contained in section 10 of the Act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the proper office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(2) Where such adverse claim is filed, action on the proof will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(3) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title, as stated, and any contest which may be filed will be disposed of by the authorizing officer in accordance with parts 1840 and 1850 of this chapter.

§ 2567.8 Loans.

(a) *Mortgage loans on existing homestead entries.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the Act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III secs. 1006a, 1006b), should proceed in accordance with § 2511.0-9(a) of this chapter.

(b) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

Group 2600—Disposition; Grants

PART 2610—CAREY ACT GRANTS

Subpart 2610—Carey Act Grants, General

Sec.

2610.0-2 Objectives.
2610.0-3 Authority.
2610.0-4 Responsibilities.
2610.0-5 Definitions.
2610.0-7 Background.
2610.0-8 Lands subject to application.

Subpart 2611—Segregation Under the Carey Act: Procedures

2611.1 Applications.
2611.1-1 Application for determination of suitability and availability of lands.
2611.1-2 Determination of suitability and availability of lands.
2611.1-3 Application for grant contract.

Sec.
2611.1-4 Approval of plan and contract.
2611.1-5 Priority of Carey Act applications.
2611.2 Period of segregation.
2611.3 Rights-of-way over other public lands.

Subpart 2612—Issuance of Patents

2612.1 Lists for patents.
2612.2 Publication of lists for patents.
2612.3 Issuance of patents.

Subpart 2613—Preference Right Upon Restoration

2613.0-3 Authority.
2613.1 Allowance of filing of applications.
2613.2 Applications.
2613.3 Allowance of preference right.

AUTHORITY: Sec. 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641), known as the Carey Act.

SOURCE: 45 FR 34232, May 21, 1980, unless otherwise noted.

Subpart 2610—Carey Act Grants, General

§ 2610.0-2 Objectives.

The objective of section 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641 *et seq.*), known as the Carey Act, is to aid public land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers.

§ 2610.0-3 Authority.

(a) The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not to exceed 1,000,000 acres of such lands to each State, under the conditions specified in the Act. The Secretary is authorized to contract and agree to grant and patent additional lands to certain States. After a State's application for a grant has been approved by the Secretary, the lands are segregated from the public domain for a period of from 3 to 15 years, the State undertaking within that time to cause the reclamation of the lands by irrigation. The lands, when reclaimed, are patented to the States or to actual settlers who are its assignees. If the lands are patented to the State, the State transfers title to the settler. Entries are limited to 160 acres to each actual settler.

(b) The Act of June 11, 1896 (29 Stat. 434; 43 U.S.C. 642), authorizes liens on the land for the cost of construction of the irrigation works, and permits the issuance of patents to States for particular tracts actually reclaimed without regard to settlement or cultivation.

(c) The Act of March 1, 1907 (34 Stat. 1056), extends the provisions of the Carey Act to the former Southern Ute Indian Reservation in Colorado.

(d) The Joint Resolution approved May 25, 1908 (35 Stat. 577), authorizes grants to the State of Idaho of an additional 1,000,000 acres.

(e) The Act of May 27, 1908 (35 Stat. 347; 43 U.S.C. 645), authorizes grants of an additional 1,000,000 acres to the State of Idaho and the State of Wyoming.

(f) The Act of February 24, 1909 (35 Stat. 644; 43 U.S.C. 647), extends the provisions of the Carey Act to the former Ute Indian Reservation in Colorado.

(g) The Act of February 16, 1911 (36 Stat. 913), extends the Carey Act to the former Fort Bridger Military Reservation in Wyoming.

(h) The Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523-524), permits the sale of surplus water by the United States Bureau of Reclamation for use upon Carey Act lands.

(i) The Act of March 4, 1911 (36 Stat. 1417; 43 U.S.C. 645), authorizes grants to the State of Nevada of an additional 1,000,000 acres.

(j) The Joint Resolution of August 21, 1911 (37 Stat. 38; 43 U.S.C. 645), authorizes grants to the State of Colorado of an additional 1,000,000 acres.

§ 2610.0-4 Responsibilities.

(a) The authority of the Secretary of the Interior to approve the applications provided for in this part, has been delegated to the Director of the Bureau of Land Management and redelegated to State Directors of the Bureau of Land Management.

(b) The grant contact must be signed by the Secretary of the Interior, or an officer authorized by him, and approved by the President.

§ 2610.0-5 Definitions.

As used in the regulations of this part:

(a) *Actual settler* means a person who establishes a primary residence on the land.

(b) *Cultivation* means tilling or otherwise preparing the land and keeping the ground in a state favorable for the growth of ordinary agricultural crops, and requires irrigation as an attendant act.

(c) *Desert lands* means unreclaimed lands which will not, without irrigation, produce any reasonably remunerative agricultural crop by usual means or methods of cultivation. This includes lands which will not, without irrigation, produce paying crops during a series of years, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. Lands which produce native grasses sufficient in quantity, if ungrazed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind without irrigation in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

(d) *Economic feasibility* means the capability of an entry to provide an economic return to the settler sufficient to provide a viable farm enterprise and assure continued use of the land for farming purposes. Factors considered in determining feasibility may include the cost of developing or acquiring water, land reclamation costs, land treatment costs, the cost of construction or acquisition of a habitable residence, acquisition of farm equipment, fencing and other costs associated with a farm enterprise, such as water delivery, seed, planting, fertilization, harvest, etc.

(e) *Grant contract* means the contract between a State and the United States which sets the terms and conditions which the State or its assignees shall comply with before lands shall be patented.

(f) *Irrigation* means the application of water to the land for the purpose of growing crops.

(g) *Ordinary agricultural crops* means any agricultural product to which the land under consideration is generally adapted, and which would return a fair reward for the expense of producing them. Ordinary agricultural crops do not include forest products, but may include orchards and other plants which cannot be grown on the land without irrigation and from which a profitable crop may be harvested.

(h) *Reclamation* means the establishment of works for conducting water in adequate volume and quantity to the land so as to render it available for distribution when needed for irrigation and cultivation.

(i) *Segregation* means the action under the Act of August 19, 1894 (39 Stat. 422), as amended (43 U.S.C. 641), by which the lands are reserved from the public domain and closed to application or entry under the public land laws, including location under the mining laws.

(j) *Smallest legal subdivision* means a quarter quarter section (40 acres).

§ 2610.0-7 Background.

The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not exceeding 1 million acres of such lands to each State, as the State may cause to be reclaimed. The State shall also cause not less than 20 acres of each 160 acre tract to be cultivated by actual settlers. A number of amendments allowed additional acreages for certain States. Colorado, Nevada and Wyoming were allowed up to 2 million acres. Idaho was allowed up to 3 million acres.

§ 2610.0-8 Lands subject to application.

(a) The lands shall be unreclaimed desert lands capable of producing ordinary agricultural crops by irrigation.

(b) The lands shall be nonmineral, except that lands withdrawn, class-fied or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals may be applied for subject to a reservation of such deposit, as explained in subpart 2093 of this title.

(c) Lands embraced in mineral permits of leases, or in applications for such permits or leases, or classified, withdrawn or reported as valuable for any leasable mineral, or lying within the geologic structure of a field are subject to the provisions of §§ 2093.0-3 through 2093.0-7 of this title.

(d) A project or individual entry may consist of 2 or more noncontiguous parcels. However, noncontiguous lands should be in a pattern compact enough to be managed as an efficient, economic unit.

Subpart 2611—Segregation Under the Carey Act: Procedures

§ 2611.1 Applications.

§ 2611.1-1 Applications for determination of suitability and availability of lands.

The first step in obtaining segregation of lands for Carey Act development shall be the filing of an application in the appropriate State office of the Bureau of Land Management requesting that the authorized officer make a determination regarding the suitability and availability of lands for a Carey Act Project. The application shall consist of a map of lands proposed to be reclaimed, containing sufficient detail to clearly show which lands are included in the Project, the mode of irrigation and the source of water. The map shall bear a certification by the State official authorized to file the application that the lands are applied for subject to the provisions of subpart 2093 of this title.

§ 2611.1-2 Determination of suitability and availability of lands.

The authorized officer shall evaluate the suitability and availability of the lands for agricultural development under the Carey Act utilizing the criteria and procedures in part 2400 of this title.

§ 2611.1-3 Application for grant contract.

If it is determined that lands are suitable and available for agricultural development under the Carey Act, the State shall submit the following, in duplicate, to the appropriate Bureau of Land Management office (43 CFR part 1821):

(a) A plan of development that includes:

(1) A report on the economic feasibility of the project and the availability of an adequate supply of water to thoroughly irrigate and reclaim the lands to raise ordinary agricultural crops.

(2) Procedures for avoiding or mitigating adverse environmental impacts and for rehabilitation of the lands if all or part of the project fails.

(3) A map in sufficient detail to show the proposed major irrigation works and the lands to be irrigated. Map material and dimensions shall be as prescribed by the authorized officer and shall be drawn to a scale not greater than 1,000 feet to 1 inch. The map shall connect canals, pipelines larger than 8 inches in diameter, reservoirs and other major facilities in relationship to public survey lines or corners, where present. The map shall show other data as needed to enable retracement of the proposed major irrigation works on the ground. The engineer who prepared the map shall certify that the system depicted therein is accurately and fully represented and that the system proposed is sufficient to fully reclaim the lands.

(4) Additional data concerning the specifics of the plan and its feasibility as required by the authorized officer.

(b) A grant contract in a form prescribed by the Director, Bureau of Land Management, in duplicate, signed by the authorized State official, shall also be filed. A carbon copy of the contract shall not be accepted. The person who signs the contract on behalf of the State shall furnish evidence of his/her authority to do so. The contract shall obligate the State to all terms and conditions of the Act and all specifications of the approved plan, and shall obligate the United States to issue patents to the State upon actual reclamation of the lands according to the plan or to settlers who are its assignees, as provided in subpart 2093 of this title.

§ 2611.1-4 Approval of plan and contract.

(a) After making a determination that the proposed project is economically feasible, that sufficient water can be furnished to thoroughly irrigate and reclaim the lands, that measures to avoid or mitigate adverse environmental impacts and to rehabilitate the lands if the project fails are adequate, and that State laws and regulations concerning the disposal of the lands to actual settlers are not contrary to the provisions and restrictions of the Act, the authorized officer may approve the plan. Before making this determination and approving the plan, the authorized officer may, in agreement with the State, modify the plan.

(b) Upon approval of the plan, the grant contract may be signed by the Secretary of the Interior, or an officer in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate. A notice that the contract has been signed and the lands are segregated shall be published in the FEDERAL REGISTER. As a condition to entering into the contract, the Secretary or his delegate may require additional terms and conditions. If such is done, the new contract form shall be returned to the State for signing.

(c) The contract is not final and binding until approved by the President.

(d) After the plan has been approved, and the contract signed and approved, the lands may be entered by the State and its agents for reclamation and for residency, if appropriate.

§ 2611.1-5 Priority of Carey Act applications.

Properly filed applications under § 2611.1-1 or § 2611.1-3 of this title shall have priority over any subsequently filed agricultural applications for lands within the project boundaries. However, the rejection of a Carey Act application will not preclude subsequent agricultural development under another authority.

§ 2611.2 Period of segregation.

(a) The States are allowed 10 years from the date of the signing of the contract by the Secretary in which to cause the lands to be reclaimed. If the State fails in this, the State Director may, in his discretion, extend the period for up to 5 years, or may restore the lands to the public domain at the end of the 10 years or any extension thereof. If actual construction of the reclamation works has not been commenced within 3 years after the segregation of the land or within such further period not exceeding 3 years as may be allowed for that purpose by the State Director, the State Director may, in his discretion, restore the lands to the public domain.

(b) All applications for extensions of the period of segregation must be submitted to the State Director. Such applications will be entertained only upon the showing of circumstances which prevent compliance by the State with the requirements within the time allowed, which, in the judgment of the State Director, could not have been reasonably anticipated or guarded against, such as the distruction of irrigation works by storms, floods, or other unavoidable casualties, unforeseen structural or physical difficulties encountered in the operations, or errors in surveying and locating needed ditches, canals, or pipelines.

§ 2611.3 Rights-of-way over other public lands.

When the canals, ditches, pipelines, reservoirs or other facilities required by the plan of development will be located on public lands not applied for by the State under the Carey Act, an application for right-of-way over such lands under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*), shall be filed separately by the proposed constructor. Rights-of-way shall be approved simultaneously with the approval of the plan, but shall be conditioned on approval of the contract.

Subpart 2612—Issuance of Patents

§ 2612.1 Lists for patents.

When patents are desired for any lands that have been segregated, the State shall file in the BLM State Office a list of lands to be patented, with a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law, that the lands have been reclaimed according to the plan of development, so that a permanent supply of water has been made available for each tract in the list, sufficient to thoroughly reclaim each 160-acre tract for the raising of ordinary agricultural crops. If patents are to be issued directly to assignees, the list shall include their names, the particular lands each claims, and a certification by the State that each is an actual settler and has cultivated at least 20 acres of each 160-acre tract. If there are portions which cannot be reclaimed, the nature, extent, location, and area of such portions should be fully stated. If less than 5 acres of a smallest legal subdivision can be reclaimed and the subdivision is not essential for the reclamation, cultivation, or settlement of the lands; such legal subdivision must be relinquished, and shall be restored to the public domain as provided in a notice published in the FEDERAL REGISTER.

§ 2612.2 Publication of lists for patents.

(a) *Notice of lists.* When a list for patents is filed in the State Office, it shall be acompanied by a notice of the filing, in duplicate, prepared for the signature of the State Director, or his delegate, fully incorporating the list. The State shall cause this notice to be published once a week for 5 consecutive weeks, in a newspaper of established character and general circulation in the vicinity of the lands, to be designated by the State Director, as provided in subpart 1824 of this chapter.

(b) *Proof of publication.* At the expiration of the period of publication, the State shall file in the State Office proof of publication and of payment for the same.

§ 2612.3 Issuance of patents.

Upon the receipt of proof of publication such action shall be taken in each case as the showing may require, and all tracts that are free from valid protest, and respecting which the law and regulations and grant contract have been complied with, shall be patented to the State, or to its assignees if the lands have been settled and cultivated. If patent issues to the State, it is the responsibility of the State to assure that the lands are cultivated and settled. If the State does not dispose of the patented lands within 5 years to actual settlers who have cultivated at least 20 acres of each 160 acre tract, or if the State disposes of the patented lands to any person who is not an actual settler or has not cultivated 20 acres of the 160 acre tract, action may be taken to revest title in the United States.

Subpart 2613—Preference Right Upon Restoration

§ 2613.0-3 Authority.

The Act approved February 14, 1920 (41 Stat. 407; 43 U.S.C. 644), provides that upon restoration of Carey Act lands from segregation, the Secretary is authorized, in his discretion, to allow a preference right of entry under other applicable land laws to any Carey Act entryman on any such lands which such person had entered under and pursuant to the State laws providing for the administration of the grant and upon which such person had established actual, bona fide residence or had made substantial and permanent improvements.

§ 2613.1 Allowance of filing of applications.

(a) *Status of lands under State laws.* Prior to the restoration of lands segregated under the Carey Act, the Bureau of Land Management shall ascertain from the proper State officials whether any entries have been allowed under the State Carey Act laws on any such lands, and if any such entries have been allowed, the status thereof and action taken by the State with reference thereto.

(b) *No entries under State laws.* If it is shown with reasonable certainty, either from the report of the State officers or by other available information, that there are no entries under State law, then the Act of February 14, 1920, shall not be considered applicable to the restoration of the lands. Lands shall be restored as provided in a notice published in the FEDERAL REGISTER.

(c) *Entries under State laws.* If it appears from the report of the State officials or otherwise that there are entries under the State law which may properly be the basis for preference rights under this act, in the order restoring the lands the authorized officer may, in his discretion, allow only the filing of applications to obtain a preference right under the Act of February 14, 1920.

§ 2613.2 Applications.

(a) Applications for preference rights under the Act of February 14, 1920, shall be filed within 90 days of the publication of the restoration order.

(b) Applications shall be on a form approved by the Director and shall set forth sufficient facts to show that the applicant is qualified under the act and these regulations. The application must be subscribed and sworn to before a notary public.

(c) *Persons qualified.* The Act of February 14, 1920, applies only to cases of entries in good faith in compliance with the requirements of State law, with a view to reclaiming the land and procuring title pursuant to the provisions of the Carey Act; the act does not apply to cases where persons have settled on or improved the segregated land, either with the approval of the State authorities or otherwise, not pursuant to State law or not in anticipation of reclaiming the lands and procuring title under the Carey Act but in anticipation of initiating some kind of a claim to the land on its restoration because of failure of the project or cancellation of the segregation.

(d) *Persons not qualified.* The Act of February 14, 1920, does not apply to cases where the applicant's entry has been canceled by the State or forfeited for failure to perfect the entry according to State law, unless the failure is the result of conditions which culminated in the elimination of the lands from the project if the State has allowed a subsequent entry for the same lands, this shall be conclusive evidence that the default was the fault of the State entryman whose entry was forfeited or canceled.

§ 2613.3 Allowance of preference right.

If a person's application is approved, such person shall have 90 days to submit an application for entry under another land law, and shall be entitled to a preference right of entry under other law if and when the lands are determined to be suitable for entry under such law pursuant to the regulations found in part 2400 of this chapter.

PART 2620—STATE GRANTS

Subpart 2621—Indemnity Selections

Sec.

2621.0-2 Objectives and background.
2621.0-3 Authority.
2621.1 Applications for selection.
2621.2 Publication and protests.
2621.3 Certifications; mineral leases and permits.
2621.4 Application for selection of unsurveyed lands.

Subpart 2622—Quantity and Special Grant Selections

2622.0-1 Purpose and scope.
2622.0-8 Lands subject to selection.

Subpart 2623—School Land Grants to Certain States Extended To Include Mineral Sections

2623.0-3 Authority.
2623.0-7 Cross reference.
2623.0-8 Lands subject to selection.
2623.1 Effective date of grant.
2623.2 Claims protected.
2623.3 States not permitted to dispose of lands except with reservation of minerals.
2623.4 Grant of mineral school sections effective upon restoration of land from reservation.

Subpart 2624—[Reserved]

Subpart 2625—Swamp-land Grants

2625.0-3 Authority.

Sec.
2625.1 Selection and patenting of swamp lands.
2625.2 Applications in conflict with swamp-land claims.

Subpart 2627—Alaska

2627.1 Grant for community purposes.
2627.2 Grant for University of Alaska.
2627.3 Grant for general purposes.
2627.4 All grants.

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

Subpart 2621—Indemnity Selections

§ 2621.0-2 Objectives and background.

Generally, grants made by Statehood Acts to the various States of school sections 16 and 36, and in addition, sections 2 and 32 in Arizona, New Mexico, and Utah, attach to a school sections on the date of acceptance or approval of the plat of survey thereof. If the acceptance or approval was prior to the granting act, or to the date of admission of the State into the Union, the grant attaches either on the date of approval of the act or the date of admission into the Union, whichever is the later date. However, if on the date the grant would otherwise attach, the land is appropriated under some applicable public land law, the grant does not attach, and the State is entitled to indemnity therefor as provided in the regulations in this subpart.

[35 FR 9607, June 13, 1970]

§ 2621.0-3 Authority.

(a) Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), referred to in §§ 2621.0-3 to 2621.4 of this subpart as *the law*, authorize the public land States except Alaska to select lands (or the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals, or any specified mineral or minerals, which interest is referred to in §§ 2621.0-3 to 2621.4 as the *mineral estate*) of equal acreage within their boundaries as indemnity for grant lands in place lost to the States because of appropriation before title could pass to the State or because of natural deficiencies resulting from such causes as fractional sections and fractional townships.

(b) The law provides that indemnity for lands lost because of natural deficiencies will be selected from the unappropriated, nonmineral, public lands, and that indemnity for lands lost before title could pass to the State will be selected from the unappropriated, public lands subject to the following restrictions:

(1) No lands mineral in character may be selected except to the extent that the selection is made as indemnity for mineral lands.

(2) No lands on a known geologic structure of a producing oil or gas field may be selected except to the extent that the selection is made as indemnity for lands on such a structure.

(c) The law also provides that lands subject to a mineral lease or permit may be selected, but only if the lands are otherwise available for selection, and if none of the lands subject to that lease or permit are in producing or producible status. It permits the selection of lands withdrawn, classified, or reported as valuable for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, oil shale, sodium, and sulphur and lands withdrawn by Executive Order 5327 of April 15, 1930, if such lands are otherwise available for, and subject to, selection: *Provided*, That except where the base lands are mineral in character, such minerals are reserved to the United States in accordance with and subject to the regulations in subpart 2093. Except for the withdrawals mentioned in this paragraph and for lands subject to classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315f), as amended, the law does not permit the selection of withdrawn or reserved lands.

(d) Subsection (b) of the section 2276 of the Revised Statutes, as amended, sets forth the principles of adjustment where selections are made to compensate for deficiencies of school lands in fractional townships.

[35 FR 9607, June 13, 1970]

§ 2621.1 Applications for selection.

(a) Applications for selection must be made on a form approved by the Director, and must be accompanied by a petition on a form approved by the Director properly executed. However, if the lands described in application have been already classified and opened for selection pursuant to the regulations of this part, no petition is required.

(b) Applications for selection under the law will be made by the proper selecting agent of the State and will be filed, in duplicate, in the proper office in the State or for lands or mineral estate in a State in which there is no office, will be filed in accordance with the provisions of § 1821.2 of this chapter.

(c) Applications must be accompanied by the following information:

(1) A reference to the Act of August 27, 1958 (72 Stat. 928), as amended.

(2) A certificate by the selecting agent showing:

(i) All facts relative to medicinal or hot springs or other waters upon the selected lands.

(This provision does not apply insofar as the application involves the selection of the mineral estate.)

(ii) That indemnity has not been previously granted for the assigned base lands and that no other selection is pending for such assigned base.

(3) A statement describing the mineral or nonmineral character of each smallest legal subdivision of the base and selected lands or mineral estate.

(4) A certificate by the officer or officers charged with the care and disposal of school lands that no instrument purporting to convey, or in any way incumber, the title to any of the land used as base or bases, has been issued by the State or its agents.

(d) In addition to the requirements of paragraph (c) of this section, applications for selection must conform with the following rules:

(1) The selected land and base lands must be described in accordance with the official plats of survey except that unsurveyed lands will be described in terms of protracted surveys as officially approved in accordance with 43 CFR 3101.1-4(d)(1). If the unsurveyed lands are not covered by protracted surveys the lands must be described in terms of their probable legal description, if and when surveyed in accordance with the rectangular system of public land surveys, or if the State Director gives written approval therefor, by a metes and bounds description adequate to identify the lands accurately.

(2) Separate base or bases do not have to be assigned to each smallest legal subdivision of selected surveyed lands or mineral estate and to each tract of unsurveyed lands upon application. However, prior to final approval of the selection, separate base or bases shall be assigned. Assignment of the smallest actual or probable legal subdivision as base will constitute an election to take indemnity for the entire subdivision and is a waiver of the State's rights to such subdivision, except that any remaining balance of acreage may be used as base in other selections.

(3) For purposes of selecting unsurveyed land a protracted section shall be considered to be a smallest legal subdivision except where the State Director finds otherwise.

(4) The cause of loss of the base lands to the State must be specifically stated for each separate base.

(Secs. 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852))

[35 FR 9607, June 13, 1970. Redesignated and amended at 46 FR 24135, Apr. 29, 1981]

§ 2621.2 Publication and protests.

(a) The State will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 of this chapter, at its own expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of a certification to the State for lands selected under the law. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

(b) The State must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

[35 FR 9607, June 13, 1970. Redesignated at 46 FR 24135, Apr. 29, 1981]

§ 2621.3 Certifications; mineral leases and permits.

(a) Certifications will be issued for all selections approved under the law by the authorized officer of the Bureau of Land Management.

(b) Where all the lands subject to a mineral lease or permit are certified to a State, or if, where the State has previously acquired title to a portion of the lands subject to a mineral lease or permit, the remaining lands in the lease or permit are certified to the State, the State shall succeed to the position of the United States thereunder. Where a portion of the lands subject to any mineral lease or permit are certified to a State, the United States shall retain for the duration of the lease or permit the mineral or minerals for which the lease or permit was issued.

[35 FR 9607, June 13, 1970. Redesignated at 46 FR 24135, Apr. 29, 1981]

§ 2621.4 Application for selection of unsurveyed lands.

(a) The authorized officer will reject any application for selection of unsurveyed lands if: (1) The costs of survey of the lands would grossly exceed the average per-acre costs of surveying public lands under the rectangular system of surveys in the State in which the lands are located, or (2) if the conveyance of the lands would create serious problems in the administration of the remaining public lands or resources thereof or would significantly diminish the value of the remaining public lands. The term *remaining public lands* means the public lands from which the applied-for lands would be separated by survey.

(b) In addition to the provisions of this section, applications for selection of unsurveyed lands are subject to the provisions of subpart 2400.

[35 FR 9607, June 13, 1970. Redesignated at 46 FR 24135, Apr. 29, 1981]

Subpart 2622—Quantity and Special Grant Selections

§ 2622.0-1 Purpose and scope.

(a) Sections 2622.0-1 to 2622.0-8 apply generally to quantity and special grants made to States other than Alaska.

(b) The regulations in §§ 2621.2 to 2621.4 apply to quantity and special grants with the following exceptions and modifications:

(1) Sections 2621.4(b) and 2621.2(c)(4); and §§ 2621.2(d) (3) and (4) and all references to base lands and to mineral estate do not apply.

(2) Section 2621.2(c)(1) is modified to require reference to the appropriate granting act; § 2621.2(c)(3) is modified to require a statement testifying to the nonmineral character of each smallest legal subdivision of the selected land; § 2621.2(d)(2) is modified to permit as much as 6,400 acres in a single selection; and § 2621.2 is modified to require a certificate that the selection and those pending, together with those approved, do not exceed the total amount granted for the stated purpose of the grant.

[35 FR 9608, June 13, 1970]

§ 2622.0-8 Lands subject to selection.

Selections made in satisfaction of quantity and special grants can generally be made only from the vacant, unappropriated, nonmineral, surveyed public lands within the State to which the grant was made. If the lands are otherwise available for selection, the States may select lands which are withdrawn, classified, or reported as valuable for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, sodium, or sulphur, provided that the appropriate minerals are reserved to the United States in accordance with and subject to the regulations of subpart 2093.

[35 FR 9608, June 13, 1970]

Subpart 2623—School Land Grants to Certain States Extended to Include Mineral Sections

Source: 35 FR 9609, June 18, 1970, unless otherwise noted.

§ 2623.0-3 Authority.

(a) The first paragraph of section 1 of the Act approved January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870), reads as follows:

> That, subject to the provisions of paragraphs (a), (b), and (c) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are hereby, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

(b) The beneficiaries of this grant are the States of Arizona, California, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The grant also extends to the unsurveyed school sections reserved, granted, and confirmed to the State of Florida by the Act of Congress approved September 22, 1922 (42 Stat. 1017; 16 U.S.C. 483, 484).

(c) The additional grant thus made, subject to all the conditions in the statute making same, applies to school-section lands known to be of mineral character at the effective date thereof as hereinafter defined. It does not include school-section lands nonmineral in character, those not known to be mineral in character at time of grant, but afterwards found to contain mineral deposits, such lands not being excepted from the grants theretofore made (Wyoming et al. v. United States, 255 U.S. 489-500, 501, 65 L. ed. 742-748), nor does it include lands in numbered school sections in lieu of or as indemnity for which lands were conveyed to the States first above named, or to the State of Florida with respect to school-section lands coming within the purview of the Act of September 22, 1922, prior to January 25, 1927.

(d) Determinations made prior to January 25, 1927, by the Secretary of the Interior or the Commissioner of the General Land Office to the effect that lands in school sections were excepted from school-land grants because of their known mineral character do not, of themselves, prevent or affect in any way the vesting of title in the States pursuant to the provisions of the statute making the additional grant.

(e) Subsection (a) of section 1 of the Act provides:

> That the grant of numbered mineral sections under this Act shall be of the same effect as prior grants for the numbered nonmineral sections, and title to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered nonmineral sections.

§ 2623.0-7 Cross reference.

For national forests and national parks, see § 1821.7-2 of this chapter. For naval petroleum reserves, see § 3102.2-2 of this chapter.

§ 2623.0-8 Lands subject to selection.

(a) *Lands included in grant.* (1) Section 2 of the Act of January 25, 1927 (44 Stat. 1027; 43 U.S.C. 871) reads as follows:

> Sec. 2. That nothing herein contained is intended or shall be held or construed to increase, diminish, or affect the rights of States under grants other than for the support of common or public schools by numbered school sections in place, and this Act shall not apply to indemnity of lieu selections or exchanges or the right hereafter to select indemnity for numbered school sections in place lost to the State under the provisions of this or other Acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect.

(2) The only grants affected in any way by the provisions of the Act of January 25, 1927, are those of numbered sections of land in place made to the States for the support of common or public schools. The adjudication of claims to land asserted under other grants, for indemnity or lieu lands and exchanges of lands, will proceed as theretofore, being governed by the provisions of existing laws applicable thereto. The States will be afforded full opportunity, however, if the facts and conditions are such as to authorize such action, either to assign new base in support of or to withdraw pending unapproved indemnity school land selections in support of which

mineral school-section lands have been tendered as base.

(b) *Lands excluded from grant.* (1) Subsection (c) of section 1 of the Act of January 25, 1927, provides:

> That any lands included within the limits of existing reservations of or by the United States, or specifically reserved for water-power purposes, or included in any pending suit or proceedings in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right is relinquished or canceled, and all lands in the Territory of Alaska are excluded from the provisions of this act.

(2) School-section lands included within the limits of existing reservations of or by the United States, specifically reserved for waterpower purposes, or included in any suit or proceedings in the courts of the United States, prior to January 25, 1927, and all lands in Alaska are excluded from the provisions of the Act. (§ 2623.4)

(3) The words *existing reservation* as used in subsection (c) are construed generally and subject to specific determination in particular cases if the need therefor shall arise, as including Indian and military reservations, naval and petroleum reserves, national parks, national forests, stock driveways, reservations established under the Act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141-143), as amended by the Act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 142), and all forms of Executive withdrawal recognized and construed by the Department of the Interior as reservations, existent prior to January 25, 1927.

§ 2623.1 Effective date of grant.

Grants to the States of school lands in place (the numbered sections), of the character and status subject thereto, as a rule, are effective and operate to vest title upon the date of the approval of the statute making the grant or the date of the admission of the State into the Union, as to lands then surveyed, and as to the lands thereafter surveyed upon the date of the acceptance of the survey thereof by the Director of the Bureau of Land Management. (United States v. Morrison, 240 U.S. 192, 60 L. ed. 599; United States v. Sweet, 245 U.S. 563, 62 L. ed. 473; Wyoming et al. v. United States, supra.) It is held, therefore, that the grant made by the first paragraph of section 1 of the Act of January 25, 1927, subject to the provision therein with respect to indemnity or lieu lands, to the provisions of subsections (b) and (c) of said section 1 and following the plain provisions of subsection (a) thereof is effective upon the date of the approval of the Act (January 25, 1927) as to lands then surveyed and the survey thereof accepted by the Director of the Bureau of Land Management and as to the unsurveyed school sections in the State of Florida granted to that State by the Act of September 22, 1922. The grant, as to other lands thereafter surveyed, subject to the same provisions is effective upon the acceptance of the survey thereof as above indicated.

§ 2623.2 Claims protected.

(a) Valid applications, claims, or rights protected by the provisions of subsection (c) of section 1 of the Act of January 25, 1927, include applications, entries, selections, locations, permits, leases, and other forms of filing, initiated or held pursuant to existing laws of the United States prior to January 25, 1927, embracing known mineral school-section lands then surveyed and otherwise within the terms of the additional grant, and as to lands thereafter surveyed, valid applications, claims, or rights so initiated or held prior to the date of the acceptance of the survey. The additional grant to the State will attach upon the effective date of the relinquishment or cancellation of any claim, so asserted, in the absence of any other valid existing claim for the land and if same be then surveyed. Should the validity of any such claim be questioned by the State, proceedings with respect thereto by protest, contest, hearing, etc., will be had in the form and manner prescribed by existing rules governing such cases. This procedure will be followed in the matter of all protests, contests, or claims filed by individuals, associations, or corporations against the States affecting school-section lands.

§ 2623.3 States not permitted to dispose of lands except with reservation of minerals.

(a) Subsection (b) of section 1 of the Act of January 25, 1927, provides:

> That the additional grant made by this Act is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided*, That any lands or minerals disposed of contrary to the provisions of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(b) The lands granted to the States by the Act of January 25, 1927, and the mineral deposits therein are to be disposed of by the States in the manner prescribed in subsection (b) thereof, provision being made for judicial forfeiture in case of disposal of any of the lands or minerals contrary to the provisions of the act.

§ 2623.4 Grant of mineral school sections effective upon restoration of land from reservation.

(a) By the Act of January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870, 871), which grants to the States certain school-section lands that are mineral in character, it is provided by subsection (c) of section 1 that where such lands are embraced within an existing reservation at the date of said Act of 1927, they are thereby excluded from the grant made by said act.

(b) Under the amendatory Act of May 2, 1932 (47 Stat. 140; 43 U.S.C. 870), it is provided that in the event of the restoration of the lands from such reservation, the grant to the State of such mineral school-section lands will thereupon become effective.

(c) Adjudications in connection with the State's title to school sections will be governed by the provisions of this amendatory Act of May 2, 1932.

Subpart 2624—[Reserved]

Subpart 2625—Swamp-land Grants

Source: 35 FR 9610, June 13, 1970, unless otherwise noted.

§ 2625.0-3 Authority.

(a) Circular dated Mar. 17, 1896, containing the swamp-land laws and regulations, states:

> As soon as practicable after the passage of the swamp-land grant of September 28, 1850, viz. on the 21st of November 1850, the commissioner transmitted to the governors of the respective States to which the grant applied copies of office circular setting forth the provisions of said Act, giving instructions thereunder, and allowing the States to elect which of two methods they would adopt for the purpose of designating the swamp lands, viz:
>
> 1. The field notes of Government survey could be taken as the basis for selections and all lands shown by them to be swamp or overflowed, within the meaning of the act, which were otherwise vacant and unappropriated September 28, 1850, would pass to the States.
>
> 2. The States could select the lands by their own agents and report the same to the United States surveyor general with proof as to the character of the same.
>
> The following States elected to make the field notes of survey the basis for determining what lands passed to them under the grant, viz: Louisiana, Michigan, and Wisconsin. Later the State of Minnesota adopted this method of settlement.
>
> The authorities of the following States elected to make their selections by their own agents and present proof that the lands selected were of the character contemplated by the swamp grant, viz: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Mississippi, Missouri, and Ohio. Later Oregon adopted this method.
>
> The States of Alabama, Arkansas, Indiana, Mississippi, and Ohio adopted the second method at the beginning, but they changed to the first method, i.e., to the field notes of survey, as a basis of settlement in recent years.
>
> The authorities of California did not adopt either method, and the passage of the Act of July 23, 1866, rendered such action on their part unnecessary.
>
> In Louisiana the selections under the grant of March 2, 1849, forming the bulk of the selections in said State, are made in a

cordance with the terms of said act by deputy surveyors, under the direction of the United States surveyor general, at the expense of the State.

(b) The grant of swamp lands, under Acts of March 2, 1849, and September 28, 1850, is a grant in praesenti. See United States Supreme Court decisions Railroad Co. v. Fremont County (9 Wall. 89, 19 L. ed. 563); Railroad Co. v. Smith (id. 95, 19 L. ed. 599); Martin v. Marks (7 Otto 345, 24 L. ed. 940); decisions of the Secretary of the Interior, December 23, 1851 (1 Lester's L.L. 549), April 25, 1862, and opinion of Attorney General, November 10, 1858 (1 Lester's L.L. 564).

(c) The Act of September 28, 1850, did not grant swamp and overflowed lands to States admitted into the Union after its passage. See decision of Secretary of the Interior, August 17, 1858; Commissioner, General Land Office, May 2, 1871 (Copp's L.L. 474), affirmed by Secretary June 1, 1871, and Commissioner, General Land Office, January 19, 1874 (Copp's L.L. 473), affirmed by Secretary July 9, 1875.

(d) A State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the Government. (See Secretary's decisions, October 4, 1855 (1 Lester's L.L. 563), August 1, 1859 (id. 571), December 4, 1877 (4 Copp's L.L. 149), and September 19, 1879.

(e) The Swamp-Land Acts do not contain any exception or reservation of mineral lands and none is to be implied, since at the time of their enactment the public policy of withholding mineral lands for disposition only under laws including them, was not established. Work, Secretary of the Interior v. Louisiana (269 U.S. 250, 70 L. ed. 259).

§ 2625.1 Selection and patenting of swamp lands.

(a) All lands properly selected and reported to the Bureau of Land Management as swamp will be compared with the records of the said office, and lists of such lands as are shown to be swamp or overflowed, within the meaning of the Acts of March 2, 1849, and September 28, 1850 (9 Stat. 352, 519), and that are otherwise free from conflict will be made out by such office and approved.

(b) When the lists have been approved a copy of each list will be transmitted to the governor of the State, with the statement that on receipt of his request patent will issue to the State for the lands. A copy of each list also will be transmitted to the authorizing officer of the proper office for the district in which the lands are situated, and he will be requested to examine the same with the records of his office and report any conflicts found.

(c) Upon receipt of a request from the governor for patent, and a report from the authorizing officer as to status, patents will issue to the State for all the lands embraced in said lists so far as they are free from conflict.

(d) Under the provisions of the Act of March 2, 1849, granting swamp lands to the State of Louisiana, a certified copy of the list approved by the Director, transmitted to the Governor, has the force and effect of a patent.

§ 2625.2 Applications in conflict with swamp-land claims.

Applications adverse to the State, in conflict with swamp-land claims, will be governed by the following rules:

(a) In those States where the adjudication of swamp-land claims is based on the evidence contained in the survey returns, applications adverse to the State for lands returned as swamp will be rejected unless accompanied by a showing that the land is non-swamp in character.

(b) In such case, the claim adverse to the State must be supported by a statement of the applicant under oath, corroborated by two witnesses, setting forth the basis of the claim and that at the date of the swamp-land grant the land was not swamp and overflowed and not rendered thereby unfit for cultivation. In the absence of such affidavit the application will be rejected. If properly supported, the application will be received and suspended subject to a hearing to determine the swamp or nonswamp character of the land, the burden of proof being upon the non-swamp claimant.

(c) In those States where the survey returns are not made the basis for adjudication of the swamp-land selections, junior applications for lands covered by swamp-land selections may be received and suspended, if supported by non-swamp affidavits corroborated by two witnesses, subject to hearing to determine the character of the land, whether swamp or non-swamp, and the burden of proof will be upon the junior applicant. Likewise, the State, if a junior applicant, may be heard upon furnishing an affidavit corroborated by two witnesses alleging that the land is swamp in character within the meaning of the swamp-land grant, in which case the burden of proof at the hearing will be upon the State.

(d) Where hearings are ordered in any such cases, the Rules of Practice governing contests will be applied, except as herein otherwise provided.

Subpart 2627—Alaska

Source: 35 FR 9611, June 13, 1970, unless otherwise noted.

§ 2627.1 Grant for community purposes.

(a) *Authority.* The Act of July 7, 1958 (72 Stat. 339, 340), grants to the State of Alaska the right to select, within 25 years after January 3, 1959, not to exceed 400,000 acres of national forest lands in Alaska which are vacant and unappropriated at the time of their selection and not to exceed 400,000 acres of other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection. The act provides that the selected lands must be adjacent to the established communities or suitable for prospective community centers and recreational areas. The act further provides that such lands shall be selected with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other lands, and that no selection shall be made north and west of the line described in section 10 of the act without approval of the President or his designated representative.

(b) *Applicable regulations.* Unless otherwise indicated therein, the regulations in § 2627.3 (a) to (d) apply to the grant and selection of lands for community purposes. In addition to the requirements of § 2627.3(c), where the selected lands are national forest, the application for selection must be accompanied by a statement of the Secretary of Agriculture or his delegate showing that he approves the selection.

(c) *Approval of selections outside of national forests.* Selection of lands outside of national forests will be approved by the authorized officer of the Bureau of Land Management if, all else being regular, he finds that approval of a selection of lands adjacent to an established community will further expansion of an established community, or if the lands are suitable for prospective community centers and recreational areas.

§ 2627.2 Grant for University of Alaska.

(a) *Statutory authority.* The Act of January 21, 1929 (45 Stat. 1091), as supplemented July 7, 1958 (72 Stat. 339, 343; 43 U.S.C. 852 Note), grants to the State of Alaska, for the exclusive use and benefit of the University of Alaska, the unsatisfied portion of 100,000 acres of vacant, surveyed, unreserved public lands in said State, to be selected by the State, under the direction and subject to the approval of the Secretary of the Interior, and subject to the conditions and limitations expressed in the act.

(b) *Applications for selection.* (1) Applications to select lands under the grant made to Alaska by the Act of January 21, 1929, will be made by the proper selecting agent of the State and will be filed in the proper office of the district in which such selected lands are situated. Such selections must be made in accordance with the law and with the applicable regulations governing selection of lands by States as set forth in part 2620.

(2) Notice of selection and publication is required as provided by § 2627.5 (b) and (c).

(3) Each list of selections must contain a reference to the act under which the selections are made and must be accompanied by a certificate of the selecting agent showing the se-

lections are made under and pursuant to the laws of the State of Alaska.

(4) The selections in any one list must not exceed 6,400 acres.

(5) Each list must be accompanied by a certification of the selecting agent stating that the acreage selected together with the cumulative acreage total of all prior sales for lists pending and finally approved for clear-listing or patenting does not exceed 100,000 acres.

(c) *Statement with application.* Every application for selection under the Act of January 21, 1929, must be accompanied by a duly corroborated statement making the following showing as to the lands sought to be selected.

(1) That no portion of the land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant; and that at the date of the application no part of the land was claimed under the mining laws.

(2) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been or should be waived. (See § 2094.2 of this chapter.)

(3) All facts relative to medicinal or hot springs or other waters upon the lands must be stated.

§ 2627.3 Grant for general purposes.

(a) *Statutory authority.* (1) The Act of July 7, 1958 (72 Stat. 339-343), referred to in paragraphs (a) to (d) of this section as *the act,* grants to the State of Alaska the right to select, within 25 years from January 3, 1959, not to exceed 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of selection. The Act of September 14, 1960 (74 Stat. 1024), defines vacant unappropriated, unreserved public lands in Alaska to include the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(2) The Act further provides that no selection shall be made in the area north and west of the line described in section 10 thereof (72 Stat. 345) without the approval of the President or his designated representative.

(b) *Lands subject to selection; patents; minerals.* (1) The Act as amended August 18, 1959 (73 Stat. 395), provides that any lease, permit, license, or contract issued under the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 *et seq.*), as amended, or under the Alaska Coal Leasing Act of 1914 (38 Stat. 741; 30 U.S.C. 432 *et seq.*), as amended, referred to in this section as *the mineral leasing acts,* shall have the effect of withdrawing the lands subject thereto from selection by the State.

(2) Under the Act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits. For the purposes of selection, leases, permits, licenses, and contracts issued under the Mineral Leasing Acts of 1914 and 1920 will be considered an appropriation of lands. Where the preference provisions of § 2627.4(a) do not apply, selections by the State of lands covered by an application filed prior to the State selection will be rejected to the extent of the conflict when and if such application is allowed. Conflicting applications and offers for mineral leases and permits, except for preference right applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management in accordance with paragraph (d) of this section.

(3) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the exterior boundaries of the selected area are officially surveyed.

(4) (i) Where the State selects all the lands in a mineral lease, permit, license, or contract, issued under the Mineral Leasing Acts of 1914 and 1920,

the patent issued under the act will convey to the State all mineral deposits in the selected lands. Any such patent shall vest in the State all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract. Issuance of patent will not affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(ii) Where the State selects a portion of the lands subject to a mineral lease, permit, license, or contract issued under the Mineral Leasing Acts of 1914 and 1920, the patent issued under the act shall reserve to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contracts. Upon the termination of the lease, permit, license, or contract, title to minerals so reserved to the United States shall pass to the State.

(c) *Applications for selection.* (1) Applications for selection of lands under the act will be made by the proper selecting agent of the State and will be filed, in duplicate, in the proper office of the district in which such selected lands are situated. No special form is required but it must be typewritten and must contain the following information:

(i) A reference to the Act of July 7, 1958 (70 Stat. 709), as supplemented, and a statement that the selection, together with other selections under the act pending or approved, does not exceed 102,550,000 acres (400,000 acres where one of the grants for community purposes is involved).

(ii) A certificate by the selecting agent showing:

(*a*) That the selection is made under and pursuant to the laws of the State.

(*b*) The acreage selected and the cumulative acreage of all prior selection lists pending and finally approved for clear-listing or patenting.

(*c*) His official title and his authority to make the selection on behalf of the State.

(*d*) That no portion of the selected land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the land other than the applicant, and that at the date of the application no part of the land claimed or occupied under the mining laws.

(*e*) That the selected land does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived. (§ 2094.2 of this chapter.)

(*f*) All the facts relative to medicinal or hot springs or other waters upon the selected lands.

(iii) If the selected lands are surveyed, the legal description of the lands in accordance with official plats of survey.

(iv) If the selected lands are unsurveyed and are described by approved protraction diagrams of the rectangular system of surveys, such description is required.

(v) If the selected lands are unsurveyed and are not described by approved protraction diagrams, a description of the lands and a map or maps, in duplicate, sufficient to permit ready identification of the location, boundaries, and area of the lands.

(2) Selections must be accompanied by a filing fee of $10 for 5,760 acres or fraction thereof in the selection which fee is not returnable.

(3) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact if it excludes other public lands available for selection within its exterior boundary. Each tract selected shall contain at least 5,760 acres unless isolated from other tracts open to selection.

(4) If the selected lands are in the area north and west of the line described in section 10 of the Act, all se-

lection made or confirmed by the act must be accompanied by a statement of the President or his designated representative showing that he approves the selection.

(5) Section 2627.3(a)(1) and (c)(1)(ii) do not apply to the extent that an application embraces a reserved or retained interest.

(d) *Effect of approval of selections.* Following the selection of lands by the State and the tentative approval of such selection by the authorized officer of the Bureau of Land Management, the State is authorized to execute conditional leases and to make conditional sales of such selected lands pending survey of the exterior boundaries of the selected area, if necessary, and issuance of patent. Said officer will notify the appropriate State official in writing of his tentative approval of a selection after determining that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both.

§ 2627.4 All grants.

(a) *State preference right of selection: waivers.* (1) The Act of July 7, 1958 (see § 2627.3(a)), provide that upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than 90 days before the date on which it otherwise becomes effective during which period the State of Alaska shall have a preferred right of selection under the acts of 1956 and 1958, except as against prior existing valid rights, equitable claims subject to allowance and confirmation and other preferred rights of application conferred by law.

(2) Where the proper selecting agent of the State files in writing in the proper office a waiver of the preference provisions of paragraph (a) of this section in connection with the proposed revocation of an order of withdrawal, the order affecting such revocation will not provide for such preference.

(b) *Segregative effect of applications.* Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the state files its application for selection in the proper office properly describing the lands as provided in § 2627.3(c)(1) (iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

(c) *Publications and protests.* (1) The State will be required to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, at its own expense, in a designated newspaper, and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent or certification for lands selected under the regulations of this part. A protestant must serve on the State a copy of the objections and furnish evidence of service to the proper office.

(2) The State must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

PART 2630—RAILROAD GRANTS

Subpart 2631—Patents for Lands Sold by Railroad Carriers (Transportation Act of 1940)

Sec.
2631.0-3 Authority.
2631.0-8 Lands for which applications may be made.
2631.1 Applications.
2631.2 Publication of notice.
2631.3 Surveying and conveyance fees.
2631.4 Patents.

Subpart 2631—Patents for Lands Sold by Railroad Carriers (Transportation Act of 1940)

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

SOURCE: 35 FR 9613, June 13, 1970, unless otherwise noted.

§ 2631.0-3 Authority.

Subsection (b) of section 321, Part II, Title III, of the Transportation Act of September 18, 1940 (54 Stat. 934; 49

U.S.C. 65), authorizes the issuance of patents for the benefit of certain innocent purchasers for value of land-grant lands from railroad carriers which have released their land-grant claims.

NOTE: Notices of releases of land grant claims by railroad carriers listing the carriers, the date of the approval of the release and the land-grant predecessors involved dated Dec. 17, 1940, May 17, 1941, and June 29, 1942, appear at 6 FR 449, 2634, and 7 FR 5319.

§ 2631.0–8 Lands for which applications may be made.

Subsection (b) of section 321, Part II, Title III, of the Transportation Act of 1940 provides that in the case of a railroad carrier, or a predecessor, which received a land grant to aid in the construction of any part of its railroad, the laws relating to compensation for certain Government transportation services shall continue to apply as though subsection (a) of section 321 had not been enacted unless the carrier shall file on or before September 18, 1941, with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands so granted, claimed to have been granted or claimed should have been granted. Section 321 provides further that nothing therein shall be construed as preventing the issuance of patents confirming the title to such uncertified or unpatented lands as the Secretary of the Interior shall find have been sold prior to September 18, 1940, to innocent purchasers for value. Subsection (b) of section 321 authorizing the issuance of such patents is not an enlargement of the grants, and does not extend them to lands not already covered thereby and, therefore, has no application to lands which for various reasons, such as mineral character, prior grants, withdrawals, reservations, or appropriation, were not subject to the grants. It does apply, however, to lands selected under remedial or lieu acts supplemental to the original grants as well as to primary and indemnity lands. Classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the Act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f), will not be required where the sold land is such as the company was authorized by law to select.

§ 2631.1 Applications.

Application, and supporting evidence, must be filed by the carrier in the proper office, accompanied by a nonrefundable application service charge of $10. The lands listed in any one application must be limited to those embraced in a single sale upon which the claim for patent is based. The application should state that it is filed under the railroad land grant act involved, properly cited, and subsection (b) of section 321, Part II, Title III of the Transportation Act of 1940 (54 Stat. 954). The application must be supported by a showing that the land is of the character which would pass under the grant involved, and was not by some superior or prior claim, withdrawal, reservation, or other reason, excluded from the operation of the grant. Full details of the alleged sale must be furnished, such as dates, the terms thereof, the estate involved, consideration, parties, amounts and dates of payments, made, and amounts due, if any, description of the land, and transfers of title. The use, occupancy, and cultivation of the land and the improvements placed thereon by the alleged purchaser should be described. All statements should be duly corroborated. Available documentary evidence, including the contract or deed, should be filed, which may be authenticated copies of the originals. An abstract of title may be necessary, dependent upon the circumstances of the particular case. No application for a patent under this act will be favorably considered unless it be shown that the alleged purchaser is entitled forthwith to the estate and interest transferred by such patent. Evidence of a recorded deed of conveyance from the carrier to the purchaser may be required. Where the company has on file an application in which the sold lands embraced, it need not file a new application, but may file a request for amendment of the pending application to come under the Transportation Act of 1940, together with the showing, supra, required as to the bona fide sale.

§ 2631.2 Publication of notice.

The authorizing officer shall direct the publication of notice of the application. The notice will be published at the carrier's expense in a newspaper of general circulation in the vicinity of the land. If a daily newspaper be designated, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, for five consecutive issues; and if semiweekly, in either issue for five consecutive weeks. The carrier must furnish evidence of such publication in due course. Notice need not be published, in case of amendment of a pending application, where publication has already been had.

§ 2631.3 Surveying and conveyance fees.

The carrier must pay the cost of the survey of the land, paying also one-half the cost of any segregation survey in accordance with the laws and regulations pertaining to the survey and patenting of railroad lands. (See 43 U.S.C. 881 *et seq.*; also subpart 1822 of this chapter.)

§ 2631.4 Patents.

If all be found regular and in conformity with the governing law and regulations, patent shall be issued in the name of the grantee under the railroad grant, the carrier paying the costs of preparation and issuance of the patent.

PART 2640—FAA AIRPORT GRANTS

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

Sec.
2640.0-1 Purpose.
2640.0-3 Authority.
2640.0-5 Definitions.
2640.0-7 Cross reference.

Subpart 2641—Procedures

2641.1 Request by Administrator for conveyance of property interest.
2641.2 Action on request.
2641.3 Publication and payment.
Sec.
2641.4 Approval of conveyance.
2641.5 Reversion.

AUTHORITY: Sec. 516, Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215).

SOURCE: 51 FR 26894, July 28, 1986, unless otherwise noted.

Subpart 2640—Airport and Airway Improvement Act of September 3, 1982

§ 2640.0-1 Purpose.

This subpart sets forth procedures for the issuance of conveyance documents for lands under the jurisdiction of the Department of the Interior to public agencies for use as airports and airways.

§ 2640.0-3 Authority.

Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

§ 2640.0-5 Definitions.

As used in this subpart, the term:

(a) *Act* means section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

(b) *Secretary* means the Secretary of the Interior.

(c) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(d) *Administrator* means the person authorized by the Secretary of Transportation to administer the Act.

(e) *Applicant* means any public agency as defined in § 153.3 of Title 14 of the Code of Federal Regulations, which, either individually or jointly with other such public agencies, submits to the Administrator an application requesting that lands or interests in lands under the jurisdiction of the Department of the Interior be conveyed to such applicant under the Act.

(f) *Property interest* means the title to or any other interest in lands or any easement through or other interest in air space.

(g) *Conveyance document* means a patent, deed or similar instrument which transfers title to lands or interests in lands.

§ 2640.0-7 Cross reference.

The regulations of the Federal Aviation Administration under the Act are found in 14 CFR part 153.

Subpart 2641—Procedures

§ 2641.1 Request by Administrator for conveyance of property interest.

Each request by the Administrator in behalf of the applicant for conveyance of a property interest in lands under the jurisdiction of the Department of the Interior shall be filed with the State Office of the Bureau of Land Management having jurisdiction of the lands or interests in lands in duplicate, and shall contain the following:

(a) A copy of the application filed by the requesting public agency with the Administrator.

(b) A description of the lands or interests in lands, if surveyed, by legal subdivisions, specifying section, township, range, meridian and State. Unsurveyed lands shall be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie shall be made to some prominent topographic feature and the approximate latitute and longitude shall be provided.

§ 2641.2 Action on request.

(a) Upon receipt of the request from the Administrator, the authorized officer shall determine whether the requested conveyance is inconsistent with the needs of the Department of the Interior, or any agency thereof, and shall notify the Administrator of the determination within 4 months after receipt of the request. On determining that the conveyance is not inconsistent with the needs of the Department of the Interior, the authorized officer also shall determine what, if any, convenants, terms, conditions and reservations should be included in the conveyance, if made. Any conveyance shall be made subject to valid existing rights of record, and to those disclosed as a result of publication or otherwise.

(b) Unless otherwise specifically provided by law, no conveyance shall be made of Federal lands within any national park, national monument, national recreation area, or similar area under the administration of the National Park Service; within any unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; within any area designated part of the National Wilderness Preservation System or any area designated as a wilderness study area; or within any national forest or Indian reservation.

(c) The applicant shall, upon request by the authorized officer, submit a deposit in an amount determined by the authorized officer, to cover the administrative costs of processing the application, including the cost of survey, if one is necessary, and issuing of a document of conveyance. No document of conveyance shall be issued for unsurveyed lands. The processing of applications under this part shall be accomplished without any expense to the Bureau of Land Management.

(d) Each applicant also shall pay the cost of publication of a notice in the Federal Register and in a newspaper of general circulation in the area in which the lands are located.

§ 2641.3 Publication and payment.

(a) Prior to issuance of a conveyance document, the authorized officer shall publish a notice of realty action in the Federal Register and in a newspaper of general circulation in the area of the lands to be conveyed. The notice shall identify the lands proposed for conveyance and contain the terms, covenants, conditions and reservations to be included in the conveyance document. The notice shall provide public comment period of 45 days from the date of publication in the Federal Register. Comments shall be sent to the Bureau of Land Management office issuing the notice.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon the issuance of a document of conveyance or 1 year after the date of publication, whichever occurs first.

(c) The determination concerning the granting or denial of an application shall be sent by the authorized officer to the applicant and to any party who commented on the application.

(d) The authorized officer shall advise the applicant whether any balance is due on the payments required of the applicant and of the time within which payment shall be made. Failure to pay the required amount within the allotted time shall constitute grounds for rejection of the application. If the applicant has deposited with the authorized officer an amount in excess of the payments required, the authorized officer shall so advise the applicant and return the excess payment.

§ 2641.4 Approval of conveyance.

(a) Each conveyance document shall contain appropriate covenants, terms, conditions and reservations requested by the Administrator, and those required for protection of the Department of the Interior or any agency thereof.

(b) Upon receipt of the payment required by § 2641.2 (c) and (d) of this title and after consideration of comments received, the authorized officer shall make a decision upon the application. If the decision is to make a conveyance, the authorized officer shall send the conveyance document to the Attorney General of the United States for consideration. Upon approval by the Attorney General, the authorized officer shall issue the conveyance document.

§ 2641.5 Reversion.

A conveyance shall be made only on the condition that, at the option of the Administrator, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport or airway purposes or are used in a manner inconsistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or is used in a manner inconsistent with the terms of the conveyance, only that particular part shall, at the option of the Administrator, revert to the United States.

PART 2650—ALASKA NATIVE SELECTIONS

Subpart 2650—Alaska Native Selections: Generally

Sec.
2650.0-1 Purpose.
2650.0-2 Objectives.
2650.0-3 Authority.
2650.0-5 Definitions.
2650.0-7 References.
2650.0-8 Waiver.
2650.1 Provisions for interim administration.
2650.2 Application procedures for land selections.
2650.3 Lawful entries, lawful settlements, and mining claims.
2650.3-1 Lawful entries and lawful settlements.
2650.3-2 Mining claims.
2650.4 Conveyance reservations.
2650.4-1 Existing rights and contracts.
2650.4-2 Succession of interest.
2650.4-3 Administration.
2650.4-4 Revenues [Reserved]
2650.4-5 National forest lands.
2650.4-6 National wildlife refuge system lands.
2650.4-7 Public easements.
2650.5 Survey requirements.
2650.5-1 General.
2650.5-2 Rule of approximation.
2650.5-3 Regional surveys.
2650.5-4 Village surveys.
2650.5-5 Cemetery sites and historical places.
2650.5-6 Adjustment to plat of survey.
2650.6 Selection limitations.
2650.7 Publication.
2650.8 Appeals.

Subpart 2651—Village Selections

2651.0-3 Authority.
2651.1 Entitlement.
2651.2 Eligibility requirements.
2651.3 Selection period.
2651.4 Selection limitations.
2651.5 Conveyance reservations.
2651.6 Airport and air navigation facilities.

Subpart 2652—Regional Selections

2652.0-3 Authority.
2652.1 Entitlement.
2652.2 Selection period.
2652.3 Selection limitations.
2652.4 Conveyance reservations.

Sec.

Subpart 2653—Miscellaneous Selections

2653.0-3 Authority.
2653.0-5 Definitions.
2653.1 Conveyance limitations.
2653.2 Application procedures.
2653.3 Lands available for selection.
2653.4 Termination of selection period.
2653.5 Cemetery sites and historical places.
2653.6 Native groups.
2653.7 Sitka-Kenai-Juneau-Kodiak selections.
2653.8 Primary place of residence.
2653.8-1 Acreage to be conveyed.
2653.8-2 Primary place of residence criteria.
2653.8-3 Appeals.
2653.9 Regional selections.
2653.10 Excess selections.
2653.11 Conveyance reservations.

Subpart 2654—Native Reserves

2654.0-3 Authority.
2654.0-5 Definitions.
2654.1 Exercise of option.
2654.2 Application procedures.
2654.3 Conveyances.

Subpart 2655—Federal Installations

2655.0-3 Authority.
2655.0-5 Definitions.
2655.1 Lands subject to determination.
2655.2 Criteria for determinations.
2655.3 Determination procedures.
2655.4 Adverse decisions.

AUTHORITY: Sec. 25, Alaska Native Claims Settlement Act of December 18, 1971; Administrative Procedure Act (5 U.S.C. 551 *et seq.*), unless otherwise noted.

SOURCE: 38 FR 14218, May 30, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 2650 appear at 47 FR 26392, June 18, 1982.

Subpart 2650—Alaska Native Selections: Generally

§ 2650.0-1 Purpose.

The purpose of the regulations in this part is to provide procedures for orderly and timely implementation of those provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) which pertain to selections of lands and interests in lands in satisfaction of the land selections conferred by said Act upon Alaska Natives and Alaska Native corporations.

§ 2650.0-2 Objectives.

The program of the Secretary is to implement such provisions in keeping with the congressional declaration of policy that the settlement of the Natives' aboriginal land claims be fair and just and that it be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation and with maximum participation by Natives in decisions affecting their rights and property.

§ 2650.0-3 Authority.

Section 25 of the Alaska Native Claims Settlement Act of December 18, 1971, authorizes the Secretary of the Interior to issue and publish in the FEDERAL REGISTER, pursuant to the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), such regulations as may be necessary to carry out the purposes of the act.

§ 2650.0-5 Definitions.

(a) *Act* means the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) and any amendments thereto.

(b) *Secretary* means the Secretary of the Interior or his authorized delegate.

(c) *Native* means a Native as defined in section 3(b) of the Act.

(d) *Native village* means any tribe, band, clan, group, village, community, or association in Alaska, as defined in section 3(c) of the Act.

(e) *Village corporation* means a profit or nonprofit Alaska Native village corporation which is eligible under § 2651.2 of this chapter to select land and receive benefits under the act, and is organized under the laws of the State of Alaska in accordance with the provisions of section 8 of the Act.

(f) *Regional corporation* means an Alaska Native regional corporation organized under the laws of the State of Alaska in accordance with the provisions of section 7 of the Act.

(g) *Public lands* means all Federal lands and interests in lands located in Alaska (including the beds of all nonnavigable bodies of water), except:

(1) The smallest practicable tract, as determined by the Secretary, enclos

ing land actually used, but not necessarily having improvements thereon, in connection with the administration of a Federal installation; and,

(2) Land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341; 77 Stat. 223; 48 U.S.C. Ch. 2), or identified for selection by the State prior to January 17, 1969, except as provided in § 2651.4(a)(1) of this chapter.

(h) *Interim conveyance* as used in these regulations means the conveyance granting to the recipient legal title to unsurveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law, subject only to confirmation of the boundary descriptions after approval of the survey of the conveyed land.

(i) *Patent* as used in these regulations means the original conveyance granting legal title to the recipient to surveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law; or the document issued after approval of the survey by the Bureau of Land Management, to confirm the boundary description of the unsurveyed conveyed lands.

(j) *Conveyance* as used in these regulations means the transfer of title pursuant to the provisions of the act whether by interim conveyance or patent, whichever occurs first.

(k) *National Wildlife Refuge System* means all lands, waters, and interests therein administered on December 18, 1971, by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas, as provided in the Act of October 15, 1966, 80 Stat. 927, as amended by the Act of July 18, 1968, 82 Stat. 359 (16 U.S.C. 668dd).

(l) *Protraction diagram* means the approved diagram of the Bureau of Land Management mathematical plan for extending the public land surveys and does not constitute an official Bureau of Land Management survey, and, in the absence of an approved diagram of the Bureau of Land Management, includes the State of Alaska protraction diagrams which have been authenticated by the Bureau of Land Management.

(m) *Date of filing* shall be the date of postmark, except when there is no postmark, in which case it shall be the date of receipt in the proper office.

(n) *LUPC* means the Joint Federal-State Land Use Planning Commission for Alaska.

(o) *Major waterway* means any river, stream, or lake which has significant use in its liquid state by watercraft for access to publicly owned lands or between communities. Significant use means more than casual, sporadic or incidental use by watercraft, including floatplanes, but does not include use of the waterbody in its frozen state by snowmobiles, dogsleds or skiplanes. Designation of a river or stream as a major waterway may be limited to a specific segment of the particular waterbody.

(p) *Present existing use* means use by either the general public which includes both Natives and non-Natives alike or by a Federal, State, or municipal corporation entity on or before December 18, 1976, or the date of selection, whichever is later. Past use which has long been abandoned shall not be considered present existing use.

(q) *Public easement* means any easement reserved by authority of section 17(b) of the Act and under the criteria set forth in these regulations. It includes easements for use by the general public and easements for use by a specific governmental agency. Public easements may be reserved for transportation, communication and utility purposes, for air, light or visibility purposes, or for guaranteeing international treaty obligations.

(r) *Publicly owned lands* means all Federal, State, or municipal corporation (including borough) lands or interests therein in Alaska, including public lands as defined herein, and submerged lands as defined by the Submerged Lands Act, 43 U.S.C. 1301, *et seq.*

(s) *Director* means the Director, Bureau of Land Managment

(t) *Isolated tract* means a tract of one or more contiguous parcels of publicly owned lands completely surrounded by lands held in nonpublic ownership or so effectively separated from other publicly owned lands as to make its use impracticable without a public easement for access.

(u) *State* means the State of Alaska.

(v) *Native corporation* means any Regional Corporation, any Village Corporation, Urban Corporation and any Native Group.

[38 FR 14218, May 30, 1973, as amended at 43 FR 55328, Nov. 27, 1978; 50 FR 15547, Apr. 19, 1985]

§ 2650.0-7 References.

(a) Native enrollment procedures are contained in 25 CFR part 43h.[1]

(b) Withdrawal procedures are contained in part 2300 of this chapter.

(c) Application procedures are contained in subpart 1821 of this chapter.

(d) Appeals procedures are contained in 43 CFR part 4, subpart E.

(e) Mineral patent application procedures are contained in part 3860 of this chapter.

(43 U.S.C. 1601-1624)

[38 FR 14218, May 30, 1973, as amended at 40 FR 33174, Aug. 6, 1975]

§ 2650.0-8 Waiver.

The Secretary may, in his discretion, waive any nonstatutory requirement of these regulations. When the rights of third parties will not be impaired, and when rapid, certain settlement of the claims of Natives will be assisted, minor procedural and technical errors should be waived.

§ 2650.1 Provisions for interim administration.

(a) (1) Prior to any conveyance under the Act, all public lands withdrawn pursuant to sections 11, 14, and 16, or covered by section 19 of the Act, shall be administered under applicable laws and regulations by the Secretary of the Interior, or by the Secretary of Agriculture in the case of national forest lands, as provided by section 22(i) of the Act. The authority of the Secretary of the Interior and of the Secretary of Agriculture to make contracts and to issue leases, permits, rights-of-way, or easements is not impaired by the withdrawals.

(2) (i) Prior to the Secretary's making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Prior to making contracts, or issuing leases, permits, rights-of-way, or easements on lands subject to election pursuant to section 19(b) of the Act, the Secretary shall obtain the consent of the representatives of the Natives living on those lands.

(b) As provided in section 17(d)(3) of the Act, any lands withdrawn pursuant to section 17(d) shall be subject to administration by the Secretary under applicable laws and regulations and his authority to make contracts, and to issue leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal. To the extent that any such land is also subject to the provisions of paragraph (a) of this section, the provisions of that subsection shall govern.

(c) As provided in section 21(e) of the Act, so long as there are no substantial revenues from real property interests conveyed pursuant to this Act and the lands are not subject to State and local real property taxes, such lands shall continue to receive forest fire protection services from the United States at no cost. The Secretary will promulgate criteria, after consultation with the concerned Native corporations and the State of Alaska, for determining when substantial revenues are accruing as to lands for which forest fire protection services are furnished by the Department of the Interior and no discontinuance of such service will be ordered by the Secretary unless he finds, after notice and opportunity for submission of views, that such discontinuance is in conformity with the criteria.

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[1] At 47 FR 13327, Mar. 30, 1982, part 43h of Title 25 was redesignated as part 69.

§ 2650.2 Application procedures for land selections.

(a) Applications for land selections must be filed on forms approved by the Director, Bureau of Land Management. Applications must be filed in accordance with subpart 1821 of this chapter.

(b) Each regional corporation shall submit with its initial application under this section a copy of the resolution authorizing the individual filing the application to do so.

(c) Each village corporation under subpart 2651 of this chapter must submit with its initial application under this section a certificate of incorporation, evidence of approval of its articles of incorporation by the regional corporation for that region, and a copy of the authorization of the individual filing the application to do so.

(d) (1) Regional and village corporations authorized by the act subsequently filing additional or amendatory applications need only refer to the serial number of the initial filing.

(2) Any change of the officer authorized to act for any corporation in the matter of land selections should be promptly submitted to the appropriate office of the Bureau of Land Management.

(e) (1) If the lands applied for are surveyed, the legal description of the lands in accordance with the official plats of survey shall be used.

(2) If the lands applied for are unsurveyed, they shall be described by protraction diagrams.

(3) If the lands applied for are not surveyed and are not covered by protraction diagrams, they must be described by metes and bounds commencing at a readily identifiable topographic feature, such as a mountain peak, mouth of a stream, etc., or a monumented point of known position, such as a triangulation station, and the description must be accompanied by a topographic map delineating the boundary of the area applied for.

(4) Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have been published, these maps shall be used to portray and describe the lands applied for. Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have not been published, then the 1:250,000 U.S.G.S. quadrangle maps with the protraction diagrams plotted thereon shall be used.

(5) If the written description shown on the application and the map portrayal accompanying the application do not agree the delineation shown on the map shall be controlling.

(f) The selected areas may be adjusted by the Secretary with the consent of the applicant and amendment of the application by the applicant, provided that the adjustment will not create an excess over the selection entitlement.

§ 2650.3 Lawful entries, lawful settlements, and mining claims.

§ 2650.3-1 Lawful entries and lawful settlements.

(a) Pursuant to sections 14(g) and 22(b) of the Act, all conveyances issued under the act shall exclude any lawful entries or entries which have been perfected under, or are being maintained in compliance with, laws leading to the acquisition of title, but shall include land subject to valid existing rights of a temporary or limited nature such as those created by leases (including leases issued under section 6(g) of the Alaska Statehood Act), contracts, permits, rights-of-way, or easements.

(b) The right of use and occupancy of persons who initiated lawful settlement or entry of land, prior to August 31, 1971, is protected: *Provided*, That:

(1) Occupancy has been or is being maintained in accordance with the appropriate public land law, and

(2) Settlement or entry was not in violation of Public Land Order 4582, as amended. Any person who entered or settled upon land in violation of that public land order has gained no rights.

(c) In the event land excluded from conveyance under paragraph (a) of this section reverts to the United States, the grantee or his successor in interest shall be afforded an opportunity to acquire such land by exchange pursuant to section 22(f) of the Act.

§ 2650.3–2 Mining claims.

(a) *Possessory rights.* Pursuant to section 22(c) of the Act, on any lands to be conveyed to village or regional corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location, including millsites, under the general mining laws and recorded notice thereof with the appropriate State or local office, shall not be challenged by the United States as to his possessory rights, if all requirements of the general mining laws are met. However, the validity of any unpatented mining claim may be contested by the United States, the grantee of the United States or its successor in interest, or by any person who may initiate a private contest. Contest proceedings and appeals therefrom shall be to the Interior Board of Land Appeals.

(b) *Patent requirements met.* An acceptable mineral patent application must be filed with the appropriate Bureau of Land Management office not later than December 18, 1976, on lands conveyed to village or regional corporations.

(1) Upon a showing that a mineral survey cannot be completed by December 18, 1976, the filing of an application for a mineral survey, which states on its face that it was filed for the purpose of proceeding to patent, will constitute an acceptable mineral patent application, provided all applicable requirements under the general mining laws have been met.

(2) The failure of an applicant to prosecute diligently his application for mineral patent to completion will result in the loss of benefits afforded by section 22(c) of the Act.

(3) The appropriate office of the Bureau of Land Management shall give notice of the filing of an application under this section to the village or regional corporation which has selection rights in the land covered by the application.

(c) *Patent requirements not met.* Any mineral patent application filed after December 18, 1976, on land conveyed to any village or regional corporation pursuant to this Act, will be rejected for lack of departmental jurisdiction. After that date, patent applications may continue to be filed on land not conveyed to village or regional corporations until such land is conveyed.

(43 U.S.C. 1601-1624)

[38 FR 14218, May 30, 1973, as amended at 40 FR 33174, Aug. 6, 1975]

§ 2650.4 Conveyance reservations.

§ 2650.4–1 Existing rights and contracts.

Any conveyance issued for surface and subsurface rights under this act will be subject to any lease, contract, permit, right-of-way, or easement and the rights of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted him.

§ 2650.4–2 Succession of interest.

Upon issuance of any conveyance under this authority, the grantee thereunder shall succeed and become entitled to any and all interests of the State of Alaska or of the United States as lessor, contractor, permitter, or grantor, in any such lease, contract, permit, right-of-way, or easement covering the estate conveyed, subject to the provisions of section 14(g) of the Act.

§ 2650.4–3 Administration.

Leases, contracts, permits, rights-of-way, or easements granted prior to the issuance of any conveyance under this authority shall continue to be administered by the State of Alaska or by the United States after the conveyance has been issued, unless the responsible agency waives administration. Where the responsible agency is an agency of the Department of the Interior, administration shall be waived when the conveyance covers all the land embraced within a lease, contract, permit, right-of-way, or easement, unless there is a finding by the Secretary that the interest of the United States requires continuation of the administration by the United States. In the latter event, the Secretary shall not renegotiate or modify any lease, contract, right-of-way or easement, or waive any right or benefit belonging to the grantee until he has notified the grantee and allowed him an opportunity to present his views.

50.4-4 Revenues. [Reserved]

50.4-5 National forest lands.

ery conveyance which includes
s within the boundaries of a na-
al forest shall, as to such lands,
tain reservations that:

) Until December 18, 1976, the sale
ny timber from the land is subject
he same restrictions relating to the
ort of timber from the United
tes as are applicable to national
st lands in Alaska under rules and
ulations of the Secretary of Agri-
ure; and.

) Until December 18, 1983, the
d shall be managed under the prin-
es of sustained yield and under
agement practices for protection
enhancement of environmental
lity no less stringent than such
agement practices on adjacent na-
al forest lands.

50.4-6 National wildlife refuge system lands.

) Every conveyance which includes
ds within the national wildlife
ge system shall, as to such lands,
vide that the United States has the
nt of first refusal so long as such
ds remain within the system. The
nt of first refusal shall be for a
iod of 120 days from the date of
ice to the United States that the
er of the land has received a bona
offer of purchase. The United
tes shall exercise such right of first
sal by written notice to the village
oration within such 120-day
od. The United States shall not be
ned to have exercised its right of
refusal if the village corporation
not consummate the sale in ac-
ance with the notice to the United
es.

Every conveyance which covers
lying within the boundaries of a
nal wildlife refuge in existence on
mber 18, 1971, shall provide that
ands shall remain subject to the
and regulations governing use
development of such refuge so
as such lands remain in the
e. Regulations governing use and
pment of refuge lands conveyed
ant to section 14 shall permit
uses that will not materially impair the values for which the refuge was established.

§ 2650.4-7 Public easements.

(a) *General requirements.* (1) Only public easements which are reasonably necessary to guarantee access to publicly owned lands or major waterways and the other public uses which are contained in these regulations, or to guarantee international treaty obligations shall be reserved.

(2) In identifying appropriate public easements assessment shall be made in writing of the use and purpose to be accommodated.

(3) The primary standard for determining which public easements are reasonably necessary for access shall be present existing use. However, a public easement may be reserved absent a demonstration of present existing use only if it is necessary to guarantee international treaty obligations, if there is no reasonable alternative route or site available, or if the public easement is for access to an isolated tract or area of publicly owned land. When adverse impacts on Native culture, lifestyle, and subsistence needs are likely to occur because of the reservation of a public easement, alternative routes shall be assessed and reserved where reasonably available. The natural environment and other relevant factors shall also be considered.

(4) All public easements which are reserved shall be specific as to use, location, and size. Standard sizes and uses which are delineated in this subsection may be varied only when justified by special circumstances.

(5) Transportation, communication, and utility easements shall be combined where the combination of such easements is reasonable considering the primary purposes for which easement is to be reserved.

(6) Public easements may be reserved to provide access to present existing Federal, State, or municipal corporation sites; these sites themselves shall not be reserved as public easements. Unless otherwise justified, access to these sites shall be limited to government use.

(7) Scenic easements or easements for recreation on lands conveyed pursuant to the Act shall not be reserved. Nor shall public easements be reserved to hunt or fish from or on lands conveyed pursuant to the Act.

(8) The identification of needed easements and major waterways shall include participation by appropriate Natives and Native corporations, LUPC, State, Federal agencies, and other members of the public.

(9) After reviewing the identified easements needs, the Director shall tentatively determine which easements shall be reserved. Tentative determinations of major waterways shall also be made by the Director and shall apply to rivers, streams, and lakes. All lakes over 640 acres in size shall be screened to determine if they qualify as major waterways. Those smaller than 640 acres may be considered on a case-by-case basis. The Director shall issue a notice of proposed easements which notifies all parties that participated in the development of the easement needs and information on major waterways as to the tentative easement reservations and which directs that all comments be sent to the LUPC and the Director.

(10) The State and the LUPC shall be afforded 90 days after notice by the Director to make recommendations with respect to the inclusion of public easements in any conveyance. If the Director does not receive a recommendation from the LUPC or the State within the time period herein called for, he may proceed with his determinations.

(11) Prior to making a determination of public easements to be reserved, the Director shall review the recommendations of the LUPC, appropriate Native corporation(s), other Federal agencies, the State, and the public. Consideration shall be given to recommendations for public easement reservations which are timely submitted to the Bureau of Land Management and accompanied by written justification.

(12) The Director, after such review, shall prepare a decision to convey that includes all necessary easements and other appropriate terms and conditions relating to conveyance of the land. If the decision prepared by the Director is contrary to the LUPC's recommendations, he shall notify the LUPC of the variance(s) and shall afford the LUPC 10 days in which to document the reasons for its disagreement before making his final decision. The Director shall then issue a Decision to Issue Conveyance (DIC).

(13) The Director shall terminate a public easement if it is not used for the purpose for which it was reserved by the date specified in the conveyance, if any, or by December 18, 2001, whichever occurs first. He may terminate an easement at any time if he finds that conditions are such that its retention is no longer needed for public use or governmental function. However, the Director shall not terminate an access easement to isolated tracts of publicly owned land solely because of the absence of proof of public use. Public easements which have been reserved to guarantee international treaty obligations shall not be terminated unless the Secretary determines that the reasons for such easements no longer justify the reservation. No public easement shall be terminated without proper notice and an opportunity for submission of written comments or for a hearing if a hearing is deemed to be necessary by either the Director or the Secretary.

(b) *Transportation easements.* (1) Public easements for transportation purposes which are reasonably necessary to guarantee the public's ability to reach publicly owned lands or major waterways may be reserved across lands conveyed to Native corporations. Such purposes may also include transportation to and from communities, airports, docks, marine coastline, groups of private holdings sufficient in number to constitute a public use, and government reservations or installations. Public easements may also be reserved for railroads. If public easements are to be reserved, they shall:

(i) Be reserved across Native lands only if there is no reasonable alternative route of transportation across publicly owned lands;

(ii) Within the standard of reasonable necessity, be limited in number and not duplicative of one another (nonduplication does not preclude separate easements for winter and summer trails, if otherwise justified);

(iii) Be subject only to specific uses and sizes which shall be placed in the appropriate interim conveyance and patent documents;

(iv) Follow existing routes of travel unless a variance is otherwise justified;

(v) Be reserved for future roads, including railroads and roads for future logging operations, only if they are site specific and actually planned for construction within 5 years of the date of conveyance;

(vi) Be reserved in topographically suitable locations whenever the location is not otherwise determined by an existing route of travel or when there is no existing site;

(vii) Be reserved along the marine coastline only to preserve a primary route of travel between coastal communities, publicly owned uplands, or coastal communities and publicly owned uplands;

(viii) Be reserved from publicly owned uplands to the marine coastline only if significant present existing use has occurred on those publicly owned lands below the line of mean high tide. However, for isolated tracts of publicly owned uplands, public easements may be reserved to provide transportation from the marine coastline if there is no other reasonable transportation route;

(ix) Be reserved along major waterways only to provide short portages or transportation routes around obstructions. However, this condition does not preclude the reservation of a trail or road easement which happens to run alongside a waterway;

(x) Not be reserved on the beds of major waterways except where use of the bed is related to road or trail purposes, portaging, or changing the mode of travel between water and land (e.g., launching or landing a boat); a specific portion of the bed or shore of the waterway which is necessary to provide portage or transportation routes around obstructions, including those that are dangerous or impassible or seasonably dangerous or impassible, may be reserved.

(xi) Not be reserved on the beds of nonmajor waterways except where use of the beds is related to road or trail purposes. However, this exception shall not be used to reserve a continuous linear easement on the streambed to facilitate access by boat.

(xii) Not be reserved simply to reflect patterns of Native use on Native lands;

(xiii) Not be reserved for the purpose of protecting Native stockholders from their respective corporations;

(xiv) Not be reserved on the basis of subsistence use of the lands of one village by residents of another village.

(2) Transportation easements shall be limited to roads and sites which are related to access. The use of these easements shall be controlled by applicable Federal, State, or municipal corporation laws or regulations. The uses stated herein will be specified in the interim conveyance and patent documents as permitted uses of the easement.

(i) The width of a trail easement shall be no more than 25 feet if the uses to be accommodated are for travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. G.V.W.);

(ii) The width of a trail easement shall be no more than 50 feet if the uses to be accommodated are for travel by large all-terrain vehicles (more than 3,000 lbs. G.V.W.), track vehicles and 4-wheel drive vehicles, in addition to the uses included under paragraph (b)(2)(i) of this section;

(iii) The width of an existing road easement shall be no more than 60 feet if the uses to be accommodated are for travel by automobiles or trucks in addition to the uses included under paragraphs (b)(2) (i) and (ii) of this section. However, if an existing road is wider than 60 feet, the specific public easement may encompass that wider width. For proposed roads, including U.S. Forest Service logging roads, the width of the public easement shall be 100 feet, unless otherwise justified. Prior to construction, trail uses which are included under paragraphs (b)(2) (i) and (ii) of this section may be permitted if otherwise justified and may continue if the road is not built. If after the road has been constructed a lesser width is sufficient to accommodate the road, the Director shall reduce the size of the easement to that width.

(iv) The width of a proposed railroad easement shall be 100 feet on either side of the center line of any such railroad.

(3) *Site easements.* Site easements which are related to transportation may be reserved for aircraft landing or vehicle parking (e.g., aircraft, boats, ATV's, cars, trucks), temporary camping, loading or unloading at a trail head, along an access route or waterway, or within a reasonable distance of a transportation route or waterway where there is a demonstrated need to provide for transportation to publicly owned lands or major waterways. Temporary camping, loading, or unloading shall be limited to 24 hours. Site easements shall not be reserved for recreational use such as fishing, unlimited camping, or other purposes not associated with use of the public easement for transportation. Site easements shall not be reserved for future logging or similar operations (e.g., log dumps, campsites, storage or staging areas). Before site easements are reserved on transportation routes or on major waterways, a reasonable effort shall be made to locate parking, camping, beaching, or aircraft landing sites on publicly owned lands; particularly, publicly owned lands in or around communities, or bordering the waterways. If a site easement is to be reserved, it shall:

(i) Be subject to the provisions of paragraphs (b)(1) (ii), (iii), (vi), (xii), (xiii), and (xiv) of this section.

(ii) Be no larger than one acre in size and located on existing sites unless a variance is in either instance, otherwise justified;

(iii) Be reserved on the marine coastline only at periodic points along the coast where they are determined to be reasonably necessary to facilitate transportation on coastal waters or transportation between coastal waters and publicly owned uplands;

(iv) Be reserved only at periodic points on major waterways. Uses shall be limited to those activities which are related to travel on the waterway or to travel between the waterway and publicly owned lands. Also, periodic site easements shall be those necessary to allow a reasonable pattern of travel on the waterway;

(v) Be reserved for aircraft landing strips only if they have present significant use and are a necessary part of a transportation system for access to publicly owned lands and are not suitable for reservation under section 14(c)(4) of the Act. Any such easement shall encompass only that area which is used for takeoffs and landings and any clear space around such site that is needed for parking or public safety.

(c) *Miscellaneous easements.* The public easements referred to in this subsection which do not fall into the categories above may be reserved in order to continue certain uses of publicly owned lands and major waterways. These public easements shall be limited in number. The identification and size of these public easements may vary from place to place depending upon particular circumstances. When not controlled by applicable law or regulation, size shall not exceed that which is reasonably necessary for the purposes of the identified easement. Miscellaneous easements may be reserved for the following purposes:

(1) Public easements which are for utility purposes (e.g., water, electricity, communications, oil, gas, and sewage) may be reserved and shall be based upon present existing use. Future easements for these purposes may also be reserved, but only if they are site specific and actually planned for construction within 5 years of the date of conveyance;

(2) Easements for air light or visibility purposes may be reserved if required to insure public safety or to permit proper use of improvements developed for public benefit or use; e.g., protection for aviation or navigation aids or communications sites;

(3) Public easements may be reserved to guarantee international treaty obligations or to implement any agreement entered into between the United States and the Native Corporation receiving the conveyance. For example, the agreement of May 14, 1974 related to Naval Petroleum Reserve Number Four (redesignated June 1 1977, as the National Petroleum Reserve-Alaska) between the United States Department of the Navy and

the Arctic Slope Regional Corporation and four Native village corporations, shall be incorporated in the appropriate conveyances and the easements necessary to implement the agreement shall be reserved.

(d) *Conveyance provisions.* (1) Public easement provisions shall be placed in interim conveyances and patents.

(2) Permissible uses of a specific easement shall be listed in the appropriate conveyance document. The conveyance documents shall include a general provision which states that uses which are not specifically listed are prohibited.

(3) The easements shall be identified on appropriate maps which shall be part of the pertinent interim conveyance and patent.

(4) All public easement shall be reserved to the United States and subject, as appropriate, to further Federal, State, or municipal corporation regulation.

(5) All conveyance documents shall contain a general provision which states that pursuant to section 17(b)(2) of the Act, any valid existing right recognized by the Act shall continue to have whatever right of access as is now provided for under existing law.

[43 FR 55329, Nov. 27, 1978]

§ 2650.5 Survey requirements.

§ 2650.5-1 General.

(a) Selected areas are to be surveyed as provided in section 13 of the Act. Any survey or description used as a basis for conveyance must be adequate to identify the lands to be conveyed.

(b) The following procedures shall be used to determine what acreage is not to be charged against Native entitlement:

(1) For any approved plat of survey where meanderable water bodies were not segregated from the survey but were included in the calculation of acreage to be charged against the Native corporation's land entitlement, the chargeable acreage shall, at no cost to the Native corporation, be recalculated to conform to the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, except as modified by this part. Pursuant to such principles, the acreage of meanderable water bodies, as modified by this part, shall not be included in the acreage charged against the Native corporation's land entitlement.

(2) For any plat of survey approved after December 5, 1983, water bodies shall be meandered and segregated from the survey in accordance with the principles contained in the Bureau of Land Management's *Manual of Surveying Instructions*, 1973, as modified by this part, as the basis for determining acreage chargeability.

(3) If title to lands beneath navigable waters, as defined in the Submerged Lands Act, of a lake less than 50 acres in size or a river or stream less than 3 chains in width did not vest in the State on the date of Statehood, such lake, river or stream shall not be meandered and shall be charged against the Native corporation's entitlement.

(4) Any determinations of meanders which may be made pursuant to this paragraph shall not require monumentation on the ground unless specifically required by law or for good cause in the public interest.

[38 FR 14218, May 30, 1973, as amended at 50 FR 15547, Apr. 19, 1985]

§ 2650.5-2 Rule of approximation.

To assure full entitlement, the rule of approximation may be applied with respect to the acreage limitations applicable to conveyances and surveys under this authority, i.e., any excess must be less than the deficiency would be if the smallest legal subdivision were eliminated (see 62 I.D. 417, 421).

§ 2650.5-3 Regional surveys.

Lands to be conveyed to a regional corporation, when selected in contiguous units, shall be grouped together for the purpose of survey and surveyed as one tract, with monuments being established on the exterior boundary at angle points and at intervals of approximately 2 miles on straight lines. If requested by the grantee, the Secretary may survey, insofar as practicable, the individual selections that comprise the total tract.

§ 2650.5–4 Village surveys.

(a) Only the exterior boundaries of contiguous entitlements for each village corporation will be surveyed. Where land within the outer perimeter of a selection is not selected, the boundaries along the area excluded shall be deemed exterior boundaries. The survey will be made after the total acreage entitlement of the village has been selected.

(b) Surveys will be made within the village corporation selections to delineate those tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the Act.

(c) (1) The boundaries of the tracts described in paragraph (b) of this section shall be posted on the ground and shown on a map which has been approved in writing by the affected village corporation and submitted to the Bureau of Land Management. Conflicts arising among potential transferees identified in section 14(c) of the Act, or between the village corporation and such transferees, will be resolved prior to submission of the map. Occupied lots to be surveyed will be those which were occupied as of December 18, 1971.

(2) Lands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map by the Bureau of Land Management. No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with the plan of survey. No further changes will be made to accommodate additional section 14(c) transferees, and no additional survey work desired by the village corporation or municipality within the area covered by the plan of survey or immediately adjacent thereto will be performed by the Secretary.

§ 2650.5–5 Cemetery sites and historical places.

Only those cemetery sites and historical places to be conveyed under section 14(h)(1) of the Act shall be surveyed.

§ 2650.5–6 Adjustment to plat of survey.

All conveyances issued for lands not covered by officially approved surveys of the Bureau of Land Management shall note that upon the filing of an official plat of survey, the boundary of the selected area, described in terms of protraction diagrams or by metes and bounds, shall be redescribed in accordance with the plats of survey. However, no change will be made in the land selected.

§ 2650.6 Selection limitations.

(a) Notwithstanding any other provisions of the act, no village or regional corporation may select lands which are within 2 miles from the boundary of any home rule or first-class city (excluding boroughs) as the boundaries existed and the cities were classified on December 18, 1971, or which are within 6 miles from the boundary of Ketchikan, except that a village corporation organized by Natives of a community which is itself a first class or home-rule city is not prohibited from making selections within 2 miles from the boundary of that first class or home-rule city, unless such selections fall within 2 miles from the boundary of another first class or home-rule city which is not itself a Native village or within 6 miles from the boundary of Ketchikan.

(b) Determination as to which cities were classified as home rule or first class as of December 18, 1971, and their boundaries as of that date will be made in accordance with the laws of the State of Alaska.

(c) If any village corporation whose land withdrawals encompass Dutch Harbor is found eligible under this act, it may select lands pursuant to subpart 2651 of this chapter and receive a conveyance under the terms of section 14(a) of the Act.

§ 2650.7 Publication.

In order to determine whether there are any adverse claimants to the land, the applicant should publish notice of his application. If the applicant decides to avail himself of the privilege of publishing a notice to all adverse claimants and requests it, the authorized officer will prepare a notice for publication. The publication will be in accordance with the following procedure:

(a) The applicant will have the notice published allowing all persons claiming the land adversely to file in the appropriate land office their objections to the issuance of any conveyance. The notice shall be published once a week for 4 consecutive weeks in a newspaper of general circulation.

(b) The applicant shall file a statement of the publisher, accompanied by a copy of the published notice, showing that publication has been had for 4 consecutive weeks. The applicant must pay the cost of publication.

(c) Any adverse claimant must serve on the applicant a copy of his objections and furnish evidence of service thereof to the appropriate land office.

(d) For all land selections made under the Act, in order to give actual notice of the decision of the Bureau of Land Management proposing to convey lands, the decision shall be served on all known parties of record who claim to have a property interest or other valid existing right in land affected by such decision, the appropriate regional corporation, and any Federal agency of record. In order to give constructive notice of the decision to any unknown parties, or to known parties who cannot be located after reasonable efforts have been expended to locate, who claim a property interest or other valid existing right in land affected by the decision, notice of the decision shall be published once in the FEDERAL REGISTER and, once a week, for four (4) consecutive weeks, in one or more newspapers of general circulation in the State of Alaska nearest the locality where the land affected by the decision is situated, if possible. Any decision or notice actually served on parties or constructively served on parties in accord with this subsection shall state that any party claiming a property interest in land affected by the decision may appeal the decision to the Board of Land Appeals. The decision or notice of decision shall also state that:

(1) Any party receiving actual notice of the decision shall have 30 days from the receipt of actual notice to file an appeal; and,

(2) That any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign a receipt for actual notice, shall have 30 days from the date of publication in the FEDERAL REGISTER to file an appeal. Furthermore, the decision or notice of decision shall inform readers where further information on the manner of, and requirements for, filing appeal may be obtained, and shall also state that any party known or unknown who may claim a property interest which is adversely affected by the decision shall be deemed to have waived their rights which were adversely affected unless an appeal is filed in accordance with the requirements stated in the decisions or notices provided for in this subsection and the regulation governing such appeals set out in 43 CFR part 4, subpart E.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976; 41 FR 17909, Apr. 29, 1976; 49 FR 6373, Feb. 21, 1984]

§ 2650.8 Appeals.

Any decision relating to a land selection shall become final unless appealed to the Board of Land Appeals by a person entitled to appeal, under, and in accordance with, subpart E of part 4, 43 CFR.

(43 U.S.C. 1601-1624)

[40 FR 33175, Aug. 6, 1975]

Subpart 2651—Village Selections

§ 2651.0-3 Authority.

Sections 12 and 16(b) of the Act provide for the selection of lands by eligible village corporations.

§ 2651.1 Entitlement.

(a) Village corporations eligible for land benefits under the Act shall be entitled to a conveyance to the surface estate in accordance with sections 14(a) and 16(b) of the Act.

(b) In addition to the land benefits in paragraph (a) of this section, each eligible village corporation shall be entitled to select and receive a conveyance to the surface estate for such acreage as is reallocated to the village corporation in accordance with section 12(b) of the Act.

§ 2651.2 Eligibility requirements.

(a) Pursuant to sections 11(b) and 16(a) of the Act, the Director, Juneau Area Office, Bureau of Indian Affairs, shall review and make a determination, not later than December 19, 1973, as to which villages are eligible for benefits under the act.

(1) *Review of listed native villages.* The Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination of the eligibility of villages listed in section 11(b)(1) and 16(a) of the Act. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to paragraph (b) of this section.

(2) *Findings of fact and notice of proposed decision.* After completion of the investigation and examination of records and evidence with respect to the eligibility of a village listed in sections 11(b)(1) and 16(a) of the Act for land benefits, the Director, Juneau Area Office, Bureau of Indian Affairs, shall publish in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska his proposed decision with respect to such eligibility and shall mail a copy of the proposed decision to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska and the State of Alaska. His proposed decision is subject to protest by any interested party within 30 days of the publication of the proposed decision in the FEDERAL REGISTER. If no valid protest is received within the 30-day period, such proposed decision shall become final and shall be published in the FEDERAL REGISTER. If the final decision is in favor of a listed village, the Director, Juneau Area Office, Bureau of Indian Affairs, shall issue a certificate as to the eligibility of the village in question for land benefits under the act, and certify the record and the decision to the Secretary. Copies of the final decisions and certificates of village eligibility shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, and the state of Alaska.

(3) *Protest.* Within 30 days from the date of publication of the proposed decision in the FEDERAL REGISTER, any interested party may protest a proposed decision as to the eligibility of a village. No protest shall be considered which is not accompanied by supporting evidence. The protest shall be mailed to the Director, Juneau Area Office, Bureau of Indian Affairs.

(4) *Action on protest.* Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall examine and evaluate the protest and supporting evidence required herein, together with his record of findings of fact and proposed decision, and shall render a decision on the eligibility of the Native village that is the subject of the protest. Such decision shall be rendered within 30 days from the receipt of the protest and supporting evidence by the Director, Juneau Area Office, Bureau of Indian Affairs. The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the FEDERAL REGISTER and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary by a notice filed within 30 days of its publication in the FEDERAL REGISTER in accordance with the regulations governing appeals set out in 43 CFR part 4, subpart E.

(5) *Action on appeals.* Appeals shall be made to the Board of Land Appeals in accordance with subpart E of part 4 of this title. Decisions of the Board on village eligibility appeals are not final until personally approved by the Secretary.

(6) *Applications by unlisted villages for determination of eligibility.* The head or any authorized subordinate officer of a Native village not listed in section 11(b) of the Act may file on

behalf of the unlisted village an application for a determination of its eligibility for land benefits under the act. Such application shall be filed in duplicate with the Director, Juneau Area Office, Bureau of Indian Affairs, prior to September 1, 1973. If the application does not constitute prima facie evidence of compliance with the requirements of paragraph (b) of this section, he shall return the application to the party filing the same with a statement of reasons for return of the application, but such filing, even if returned, shall constitute timely filing of the application. The Director, Juneau Area Office, Bureau of Indian Affairs, shall immediately forward an application which appears to meet the criteria for eligibility to the appropriate office of the Bureau of Land Management for filing. Each application must identify the township or townships in which the Native village is located.

(7) *Segregation of land.* The receipt of the selection application for filing by the Bureau of Land Management shall operate to segregate the lands in the vicinity of the village as provided in sections 11(a)(1) and (2) of the Act.

(8) *Action on application for eligibility.* Upon receipt of an application which appears to meet the criteria for eligibility, the Director, Juneau Area Office, Bureau of Indian Affairs, shall have a notice of the filing of the application published in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall promptly review the statements contained in the application. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to this subpart 2651, and thereafter make findings of fact as to the character of the village. No later than December 19, 1973, the Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination as to the eligibility of the village as a Native village for land benefits under the act and shall issue a decision. He shall publish his decision in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall mail a copy of the decision to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations, and the State of Alaska.

(9) *Protest to eligibility determination.* Any interested party may protest a decision of the Director, Juneau Area Office, Bureau of Indian Affairs, regarding the eligibility of a Native village for land benefits under the provisions of sections 11(b)(3)(A) and (B) of the Act by filing a notice of protest with the Director, Juneau Area Office, Bureau of Indian Affairs, within 30 days from the date of publication of the decision in the FEDERAL REGISTER. A copy of the protest must be mailed to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations within Alaska, the State of Alaska, and any other parties of record. If no protest is received within the 30-day period, the decision shall become final and the Director, Juneau Area Office, Bureau of Indian Affairs, shall certify the record and the decision to the Secretary. No protest shall be considered which is not accompanied by supporting evidence. Anyone protesting a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect. Anyone appealing a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect.

(10) *Action on protest appeal.* Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall follow the procedure outlined in paragraph (a)(4) of this section. If an appeal is taken from a decision on eligibility, the provisions of paragraph (a)(5) of this section shall apply.

(b) Except as provided in paragraph (b)(4) of this section, villages must meet each of the following criteria to be eligible for benefits under sections 14(a) and (b) of the Act:

(1) There must be 25 or more Native residents of the village on April 1, 1970, as shown by the census or other evidence satisfactory to the Secretary.

A Native properly enrolled to the village shall be deemed a resident of the village.

(2) The village shall have had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time: *Provided*, That no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years.

(3) The village must not be modern and urban in character. A village will be considered to be of modern and urban character if the Secretary determines that it possessed all the following attributes as of April 1, 1970:

(i) Population over 600.

(ii) A centralized water system and sewage system that serves a majority of the residents.

(iii) Five or more business establishments which provide goods or services such as transient accommodations or eating establishments, specialty retail stores, plumbing and electrical services, etc.

(iv) Organized police and fire protection.

(v) Resident medical and dental services, other than those provided by Indian Health Service.

(vi) Improved streets and sidewalks maintained on a year-round basis.

(4) In the case of unlisted villages, a majority of the residents must be Native, but in the case of villages listed in sections 11 and 16 of the Act, a majority of the residents must be Native only if the determination is made that the village is modern and urban pursuant to paragraph (b)(3) of this section.

(43 U.S.C. 1601-1624)

[38 FR 14218, May 30, 1973, as amended at 40 FR 33175, Aug. 6, 1975; 49 FR 6373, Feb. 21, 1984]

§ 2651.3 Selection period.

Each eligible village corporation must file its selection application(s) not later than December 18, 1974, under sections 12(a) or 16(b) of the Act; and not later than December 18, 1975, under section 12(b) of the Act.

§ 2651.4 Selection limitations.

(a) Each eligible village corporation may select the maximum surface acreage entitlement under sections 12(a) and (b) and section 16(b) of the Act. Village corporations selecting lands under sections 12(a) and (b) may not select more than:

(1) 69,120 acres from land that, prior to January 17, 1969, has been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act; and

(2) 69,120 acres of land from the National Wildlife Refuge System; and

(3) 69,120 acres of land from the National Forest System.

(b) To the extent necessary to obtain its entitlement, each eligible village corporation shall select all available lands within the township or townships within which all or part of the village is located, and shall complete its selection from among all other available lands. Selections shall be contiguous and, taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact, except where separated by lands which are unavailable for selection. The total area selected will not be considered to be reasonably compact if (1) it excludes other lands available for selection within its exterior boundaries; or (2) lands which are similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process; or (3) an isolated tract of public land of less than 1,280 acres remains after selection.

(c) The lands selected under sections 12(a) or (b) shall be in whole sections where they are available, or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres. Lands selected under section 16(b) of the Act shall conform to paragraph (b) of this section and shall conform as nearly as practicable to the U.S. land survey system.

(d) Village corporation selections within sections 11 (a)(1) and (a)(3) areas shall be given priority over regional corporation selections for the same lands.

(e) Village or regional corporations are not required to select lands within an unpatented mining claim or millsite. Unpatented mining claims and millsites shall be deemed to be selected, unless they are excluded from the selection by metes and bounds or other suitable description and there is attached to the selection application a copy of the notice of location and any amendments thereto. If the village or regional corporation selection omits lands within an unpatented mining claim or millsite, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the excepted mining claims or millsites are declared invalid, or under the State of Alaska mining laws are determined to be abandoned, the selection will no longer be considered as compact and contiguous. The corporation shall be required to amend its selection, upon notice from the authorized officer of the Bureau of Land Management, to include the lands formerly included in the mining claim or millsite. If the corporation fails to amend its selection to include such lands, the selection may be rejected.

(f) Eligible village corporations may file applications in excess of their total entitlement. To insure that a village acquires its selection in the order of its priorities, it should identify its choices numerically in the order it wishes them granted. Such selections must be filed not later than December 18, 1974, as to sections 12(a) or 16(b) selections and December 18, 1975, as to section 12(b) selections.

(g) Whenever the Secretary determines that a dispute exists between villages over land selection rights, he shall accept, but not act on, selection applications from any party to the dispute until the dispute has been resolved in accordance with section 12(e) of the Act.

(h) Village or regional corporations may, but are not required to, select lands within pending Native allotments. If the village or regional corporation selection omits lands within a pending Native allotment, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the pending Native allotment is finally rejected and closed, the village or regional corporation may amend its selection application to include all of the land formerly in the Native allotment application, but is not required to do so to meet the requirements for compactness and contiguity.

[38 FR 14218, May 30, 1973, as amended at 39 FR 34543, Sept. 26, 1974; 50 FR 15547, Apr. 19, 1985]

§ 2651.5 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to village corporations shall provide for the transfer of the surface estates specified in section 14(c) of the Act, and shall be subject to valid existing rights under section 14(g) of the Act.

§ 2651.6 Airport and air navigation facilities.

(a) Every airport and air navigation facility owned and operated by the United States which the Secretary determines is actually used in connection with the administration of a Federal program will be deemed a *Federal installation* under the provisions of section 3(e) of the Act, and the Secretary will determine the smallest practicable tract which shall enclose such Federal installations. Such Federal installations are not public lands as defined in the act and are therefore not *lands available for selection* under the provisions of these regulations.

(b) The surface of all other lands of existing airport sites, airway beacons, or other navigation aids, together with such additional acreage or easements as are necessary to provide related services and to insure safe approaches to airport runways, shall be conveyed by the village corporation to the State of Alaska, and the Secretary will include in the conveyance to any village corporation any and all covenants which he deems necessary to insure the fulfillment of this obligation.

Subpart 2652—Regional Selections

§ 2652.0-3 Authority.

Sections 12 (a)(1) and (c)(3) provide for selections by regional corporations; and sections 14 (e), (f), (h), (1), (2), (3), (5), and (8), provide for the conveyance to regional corporations of the selected surface and subsurface estates, as appropriate.

§ 2652.1 Entitlement.

(a) Eligible regional corporations may select the maximum acreage granted pursuant to section 12(c) of the Act. They will be notified by the Secretary of their entitlement as expeditiously as possible.

(b) Where subsurface rights are not available to the eligible regional corporations in lands whose surface has been conveyed under section 14 of the Act, the regional corporations may select an equal subsurface acreage from lands withdrawn under sections 11(a) (1) and (3) of the Act, within the region, if possible.

(c) As appropriate, the regional corporations will receive title to the subsurface estate of lands, the surface estate of which is conveyed pursuant to section 14 of the Act.

(d) If a 13th regional corporation is organized under section 7(c) of the Act, it will not be entitled to any grant of lands.

§ 2652.2 Selection period.

All regional corporations must file their selection applications not later than December 18, 1975, for lands other than those allocated under section 14(h)(8) of the Act.

§ 2652.3 Selection limitations.

(a) To the extent necessary to obtain its entitlement, each regional corporation must select all available lands withdrawn pursuant to sections 11(a)(1)(B) and (C) of the Act, before selecting lands withdrawn pursuant to section 11(a)(3) of the Act, except that regional corporations selecting lands withdrawn pursuant to sections 11(a)(1) (B) and (C) may select only even-numbered townships in even-numbered ranges and only odd-numbered townships in odd-numbered ranges.

(b) Village corporation selections within section 11(a)(1) and section 11(a)(3) areas shall be given priority over regional corporation selections for the same lands.

(c) Whenever a regional selection is made in any township, the regional corporation shall select all available lands in that township: *Provided*, That such selection would not exceed the entitlement of that regional corporation.

(d) Subsurface selections made by a regional corporation pursuant to section 12(a) of the Act shall be contiguous and the total area selected shall be reasonably compact, except as separated by subsurface interests that are not the property of the United States including subsurface interests under bodies of water, and the selection shall be in whole sections where they are available, or shall include all available subsurface interests in less than whole sections and, wherever feasible, shall be in units of not less than 1,280 acres. The total area selected shall not be considered to be reasonably compact if (1) it excludes other subsurface interests available for selection within its exterior boundaries; or (2) an isolated tract of subsurface interests owned by the United States of less than 1,280 acres remains after selection.

(e) Regional corporations are not required to select lands within unpatented mining claims or millsites, as provided in § 2651.4(e) of this chapter.

(f) Regional corporations may file applications in excess of their total entitlement. To insure that a regional corporation acquires its selections in the order of its priorities, it should identify its choices numerically in the order it wishes them granted.

§ 2652.4 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to regional corporations for the subsurface estate of lands whose surface has been conveyed to village corporations shall provide that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the village corporation.

Subpart 2653—Miscellaneous Selections

§ 2653.0-3 Authority.

Section 14(h) of the Act requires the Secretary to withdraw and to convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 11 and 16 of the Act. The Secretary will convey the land in part as follows:

(a) Title to existing cemetery sites and historical places to the regional corporations for the regions in which the lands are located;

(b) Title to the surface estate to any Native group that qualifies pursuant to this subpart 2653;

(c) Title to the surface estate of lands to the Natives residing in each of the cities of Sitka, Kenai, Juneau, and Kodiak, who have incorporated;

(d) Title to the surface estate of land to a Native as a primary place of residence.

(e) Title to the regional corporations for lands selected, if any remain, pursuant to section 14(h)(8) of the Act; and

(f) Title to the subsurface estate to the regional corporations of lands conveyed under paragraphs (b) and (d) of this section and title to the regional corporations to the subsurface estate to those lands not located in a National Wildlife Refuge under paragraph (c) of this section.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976]

§ 2653.0-5 Definitions.

(a) *Cemetery site* means a burial ground consisting of the gravesites of one or more Natives.

(b) *Historical place* means a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wood gathering, or reindeer husbandry. However, such uses may be considered in the evaluation of the sustained Native historical activity associated with the tract or area.

(c) *Native group* means any tribe, band, clan, village, community or village association of Natives composed of less than 25, but more than 3 Natives, who comprise a majority of the residents of a locality and who have incorporated under the laws of the State of Alaska.

(d) *Primary place of residence* means a place comprising a primary place of residence of an applicant on August 31, 1971, at which he regularly resides on a permanent or seasonal basis for a substantial period of time.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976]

§ 2653.1 Conveyance limitations.

(a) Under section 14(h) of the Act, a total of 2 million acres may be selected for cemetery sites and historical places, Native groups, corporations formed by the Native residents of Sitka, Kenai, Juneau, and Kodiak, for primary places of residence, and for Native allotments approved as provided in section 18 of the Act. Selections must be made before July 1, 1976. Of this total amount:

(1) 500,000 acres will be set aside to be used by the Secretary to satisfy applications filed pursuant to section 14(h) (1), (2), and (5) of the Act. The 500,000 acres will be allocated by: (i) Dividing 200,000 acres among the regions based on the number of Natives enrolled in each region; and, (ii) dividing 300,000 acres equally among the regions;

(2) 92,160 acres will be set aside for possible allocation by the Secretary to corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak;

(3) 400,000 acres will be set aside to be used by the Secretary to satisfy Native allotment applications approved prior to December 18, 1975, under the Act of May 17, 1906 (34 Stat. 197), the Act of February 8, 1887 (24 Stat. 389), as amended and supple-

mented, and the Act of June 25, 1910 (36 Stat. 863). Any Native allotment applications pending before the Bureau of Indian Affairs or the Bureau of Land Management on December 18, 1971, will be considered as *pending before the Department.* Those allotment applications which have been determined to meet the requirements of the acts cited herein and for which survey has been requested before December 18, 1975, shall be considered *approved* under section 14(h)(6) of the Act and shall be charged against the acreage.

(b) After subtracting the number of acres used in accordance with paragraph (a) of this section from 2 million acres, the remainder will, after July 1, 1976, be reallocated by the Secretary among the regional corporations in accordance with the number of Natives enrolled in each region.

(c) No Native allotment applications pending before the Secretary on December 18, 1971, will be rejected solely for the reason that the acreage set aside by paragraph (a)(3) of this section has been exhausted.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976]

§ 2653.2 Application procedures.

(a) All applications must be filed in accordance with the procedures in § 2650.2(a) of this chapter.

(b) Applications by corporations of Native groups under section 14(h)(2) and by a Native for a primary place of residence under section 14(h)(5) of the Act must be accompanied by written concurrence of the affected regional corporation. In the case of Native groups, such concurrence must also indicate how much land per member of the Native group, not to exceed 320 acres per member, the regional corporation recommends that the Secretary convey. Any application not accompanied by the necessary concurrence and recommendation of the affected region will be rejected.

(c) Native groups, and Natives residing in Sitka, Kenai, Juneau, and Kodiak, as provided in sections 14(h)(2) and (3), respectively, must comply with the applicable terms of § 2650.2(a), (c), (d), (e), and (f) of this chapter.

(d) The filing of an application under the regulations of this section will constitute a request for withdrawal of the lands, and will segregate the lands from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended, subject to valid existing rights, but will not segregate the lands from selections under section 12 or 16 of the Act. The segregative effect of such an application will terminate if the application is rejected.

§ 2653.3 Lands available for selection.

(a) Selection may be made for existing cemetery sites or historical places, Native groups, corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak, and for primary places of residence, from any unappropriated and unreserved lands which the Secretary may withdraw for these purposes: *Provided,* That National Wildlife Refuge System lands and National Forest lands may be made available as provided by section 14(h)(7) of the Act and the regulations in this subpart. Selections for these purposes may also be made from any unappropriated and unreserved lands which the Secretary may withdraw from lands formerly withdrawn and not selected under section 16 of the Act and after December 18, 1975, from lands formerly withdrawn under section 11(a)(1) or 11(a)(3) and not selected under sections 12 or 19 of the Act.

(b) After December 18, 1975, selection of the lands allocated pursuant to § 2653.1(b), shall be made from any lands previously withdrawn under sections 11 or 16 of the Act which are not otherwise appropriated.

(c) A withdrawal made pursuant to section 17(d)(1) of the Act which is not part of the Secretary's recommendation to Congress of December 18, 1973, on the four national systems shall not preclude a withdrawal pursuant to section 14(h) of the Act.

[41 FR 14737, Apr. 7, 1976; 41 FR 17909, Apr. 29, 1976]

§ 2653.4 Termination of selection period.

Except as provided in § 2653.10, applications for selections under this subpart will be rejected after all allocated lands, as provided in § 2653.1, have been exhausted, or if the application is received after the following dates, whichever occurs first:

(a) As to primary place of residence—December 18, 1973.

(b) As to all recipients described in sections 14(h) (1), (2), and (3) of the Act—December 31, 1976.

(c) As to all recipients under section 14(h)(8) of the Act and § 2653.1(b)—September 18, 1978.

[41 FR 14737, Apr. 7, 1976, as amended at 41 FR 44041, Oct. 6, 1976; 43 FR 11822, Mar. 22, 1978]

§ 2653.5 Cemetery sites and historical places.

(a) The appropriate regional corporation may apply to the Secretary for the conveyance of existing cemetery sites or historical places pursuant to section 14(h) of the Act. The Secretary may give favorable consideration to these applications: *Provided*, That the Secretary determines that the criteria in these regulations are met *And provided further*, That the regional corporation agrees to accept a covenant in the conveyance that these cemetery sites or historical places will be maintained and preserved solely as cemetery sites or historical places by the regional corporation, in accordance with the provisions for conveyance reservations in § 2653.11.

(b) A historical place may be granted in a National Wildlife Refuge or National Forest unless, in the judgment of the Secretary, the events or the qualities of the site from which it derives its particular value and significance as a historical place can be commemorated or found in an alternative site outside the refuge or forest, or if the Secretary determines that the conveyance could have a substantial detrimental effect on (1) a fish or wildlife population, (2) its habitat, (3) the management of such population or habitat, or (4) access by a fish or wildlife population to a critical part of its habitat.

(c) Although the existence of a cemetery site or historical place and a proper application for its conveyance create no valid existing right, they operate to segregate the land from all other forms of appropriation under the public land laws. Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this subpart are subject to the provisions of section 22(g) of the Act and § 2650.4-6 as though they were conveyances to a village corporation.

(d) For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or

(2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or

(3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or

(4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or

(5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

(e) Criteria considerations for historic places: Ordinarily, cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible as a historical place unless they fall within one of the following categories:

(1) A religious property deriving primary significance from architectural or artistic distinction or historical importance;

(2) A building or structure removed from its original location but which is

the surviving structure most importantly associated with a historic person or event;

(3) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;

(4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

(5) A reconstructed building when accurately executed in a suitable environment and preserved in a dignified manner as part of a restoration master plan and when no other building or structure with the same association has survived;

(6) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

(7) A property achieving significance within the past 50 years if it is of exceptional importance.

(f) Applications by a regional corporation under section 14(h)(1) of the Act for conveyance of existing cemetery sites or historical places within its boundaries shall be filed with the proper office of the Bureau of Land Management in accordance with § 2650.2(a) of this chapter. The regional corporation shall include as an attachment to its application for a historical place a statement describing the events that took place and the qualities of the site from which it derives its particular value and significance as a historical place. In making the application, the regional corporation should identify accurately and with sufficient specificity the size and location of the site for which the application is made as an existing cemetery site or historical place to enable the Bureau of Land Management to segregate the proper lands. The land shall be described in accordance with § 2650.2(e) of this chapter, except that if the site under application is less than 2.50 acres or if it cannot be described by a protracted survey description, it shall be described by a metes and bounds description.

(g) Upon receipt of an application for an existing cemetery site or historical place, the Bureau of Land Management shall segregate from all other appropriation under the public land laws the land which it determines adequately encompasses the site described in the application.

(h) Notice of filing of such application specifying the regional corporation, the size and location of the segregated lands encompassing the site for which application has been made, the date of filing, and the date by which any protest of the application must be filed shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. The Bureau of Land Management shall then forward the application to the Director, Juneau Area Office, Bureau of Indian Affairs, for investigation, report, and certification and supply a copy to the National Park Service. When an application pertains to lands within a National Wildlife Refuge or National Forest, the Bureau of Land Management shall also forward informational copies of the application and the size and location of segregated lands to the agency or agencies involved.

(i) If, during its investigation, the Bureau of Indian Affairs finds that the location of the site as described in the application is in error, it shall notify the applicant, the Bureau of Land Management, and other affected Federal agencies, of such error. The applicant shall have 60 days from receipt of such notice to file with the Bureau of Land Management an amendment to its application with respect to the location of the site. Upon acceptance of such amendment the Bureau of Land Management shall reprocess the application, including segregation of lands and publication of notice.

(j) The Bureau of Indian Affairs shall identify on a map and mark on the ground, including gravesites or other important items, the location and size of the site or place with sufficient clarity to enable the Bureau of Land Management to locate on the ground said site or place. The Bureau of Indian Affairs, after consultation with the National Park Service and, in the case of refuges and forests, the agency or agencies involved, shall certify as to the existence of the site or place and that it meets the criteria in this subpart.

(1) *Cemetery sites.* The Bureau of Indian Affairs shall certify specifically that the site is the burial place of one or more Natives. The Bureau of Indian Affairs shall determine whether the cemetery site is in active or inactive use, and if active, it shall estimate the degree of use by Native groups and villages in the area which it shall identify.

(2) *Historical places.* The Bureau of Indian Affairs shall describe the events that took place and qualities of the site which give it particular value and significance as a historical place.

(k) The Bureau of Indian Affairs shall submit its report and certification along with the written comments and recommendations of the National Park Service and any other Federal agency, to the Bureau of Land Management. If the land is available, the Bureau of Land Management shall issue a decision to convey. However, where the issues in § 2653.5(b) are raised by the reports of the Fish and Wildlife Service or the Forest Service, the State Director, Bureau of Land Management shall submit the record including a land status report, to the Secretary for a resolution of any conflicts. If the land is available for that purpose, the Secretary shall make his determination to convey or not to convey the site to the applicant.

(l) The decision of the Bureau of Land Management or the Secretary shall be served on the applicant and all parties of record in accordance with the provisions of 43 CFR part 4, subpart E and shall be published in accordance with § 2650.7 of this part. The decision of the Bureau of Land Management shall become final unless appealed to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E. Any agency adversely affected by the certification of BIA or the decision of the Bureau of Land Management may also appeal the matter to the Board of Land Appeals. After a decision to convey an existing cemetery site or historical place has become final, the Bureau of Land Management shall adjust the segregation of the lands to conform with said conveyance.

(m) For inactive cemeteries, the boundaries of such cemetery sites shall include an area encompassing all actual gravesites including a reasonable buffer zone of not more than 66 feet. For active cemeteries, the boundaries of such sites shall include an area of actual use and reasonable future expansion of not more than 10 acres, but the BLM in consultation with any affected Federal agency may include more than 10 acres upon a determination that special circumstances warrant it. For historical places, the boundaries shall include an area encompassing the actual site with a reasonable buffer zone of not more than 330 feet.

[41 FR 14738, Apr. 7, 1976; 41 FR 17909, Apr. 29, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

§ 2653.6 Native groups.

(a) *Eligibility.* (1) The head or any authorized representative of a Native group incorporated pursuant to section 14(h)(2) of the Act may file on behalf of the group an application for a determination of its eligibility under said section of the Act. Such application shall be filed in duplicate with the appropriate officer, Bureau of Land Management, prior to April 16, 1976, in accordance with § 2650.2(a) of this chapter. Upon serialization of the application, the Bureau of Land Management office will forward a copy of such application to the Director, Juneau Area Office, Bureau of Indian Affairs, who shall investigate and report the findings of fact required to be made herein to the Bureau of Land Management with a certification thereof. A copy of an application by a group located within a National Wildlife Refuge or a National Forest will be furnished to the appropriate agency administering the area.

(2) Each application must identify the section, township, and range in which the Native group is located, and must be accompanied by a list of the names of the Native members of the

group, a listing of permanent improvements and periods of use of the locality by members, a conformed copy of the group's article of incorporation, and the regional corporation's concurrence and recommendation under § 2653.2(b).

(3) Notice of the filing of such application specifying the date of such filing, the identity and location of the Native group, and the date by which any protest of the application must be filed shall be prepared by the Bureau of Indian Affairs and shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. Any protest to the application shall be filed with the Bureau of Indian Affairs within the time specified in the notice.

(4) The Bureau of Indian Affairs shall investigate and determine whether each member of a Native group formed pursuant to section 14(h)(2) of the Act is enrolled pursuant to section 5 of the Act. The Bureau of Indian Affairs shall determine whether the members of the Native group actually reside in and are enrolled to the locality specified in its application. The Bureau of Indian Affairs shall specify the number and names of Natives who actually reside in and are enrolled to the locality, including children who are members of the group and who are temporarily elsewhere for purposes of education, and it shall further determine whether the members of the Native group constitute the majority of the residents of the locality where the group resides. The Bureau of Indian Affairs shall determine and identify the exterior boundaries of the Native group's locality and the location of all those permanent structures of the Native group used as dwelling houses.

(5) The Native group must have an identifiable physical location. The members of the group must use the group locality as a place where they actually live in permanent structures used as dwelling houses. The group must have the character of a separate community, distinguishable from nearby communities, and must be composed of more than a single family or household. Members of a group must have enrolled to the group's locality pursuant to section 5 of the Act, must actually have resided there as of the 1970 census enumeration date, and must have lived there as their principal place of residence since that date.

(6) The Bureau of Indian Affairs shall issue its certification, containing its findings of fact required to be made herein and its determination of the eligibility of the Native group, except it shall issue a certification of ineligibility when it is notified by the Bureau of Land Management that the land is unavailable for selection by such Native group. It shall send a copy thereof by certified mail to the Bureau of Land Management, the Native group, its regional corporation and any party of record.

(7) Appeals concerning the eligibility of a Native group may be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

(b) *Selections.* (1) Native group selections shall not exceed the amount recommended by the regional corporation or 320 acres for each Native member of a group, or 7,680 acres for each Native group, whichever is less. Any acreage selected in excess of that number shall be identified as alternate selections and shall be numerically ordered to indicate selection preference. Native groups will not receive land benefits unless the land which is occupied by their permanent structures used as dwelling houses is available, or in the case where such land is not State or federally owned, the land which is contiguous to and immediately surrounds the land occupied by their permanent structures used as dwelling houses is available, and is not within a wildlife refuge or forest, pursuant to section 14(h) of the Act. Public lands which may be available for this purpose are set forth in § 2653.3 (a) and (c). Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this part are subject to the provisions of section 22(g) of the Act and § 2650.4-6 of this chapter as though they were conveyances to a village corporation.

(2) Upon receipt of the applications of a Native group for a determination of its eligibility under section 14(h)(2) of the Act, the Bureau of Land Management shall segregate the land encompassed within the group locality from land available for that purpose pursuant to § 2653.6(b)(1). However, segregation of land for Native groups whose dwelling structures are located outside but adjacent to a National Wildlife Refuge or National Forest shall not include such reserved land, unless the Native group's dwelling structures are located on land excepted from the Kodiak National Wildlife Refuge pursuant to Public Land Order 1634 (FR Doc. 58-3696, filed May 16, 1958).

(3) The Bureau of Indian Affairs shall visit the locality of the group and shall recommend to the Bureau of Land Management the manner in which the segregation should be modified to encompass the residences of as many members as possible while allowing for the inclusion of the land most intensively used by members of the Native group. The recommended segregation must be contiguous and as compact as possible. The Bureau of Land Management may segregate the land accordingly provided such lands are otherwise available in accordance with paragraph (b)(1) and (b)(2). If the Bureau of Land Management finds the lands are unavailable for selection by a Native group, it shall notify the Bureau of Indian Affairs.

(4) Selections shall be made from lands segregated for that purpose and shall be filed prior to July 1, 1976. Selections shall be contiguous and taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact except where separated by lands which are unavailable for selection. The total area selected will not be considered to be reasonably compact if (i) it excludes other lands available for selection within its exterior boundaries; or (ii) an isolated tract of public land of less than 640 acres remains after selection. The lands selected shall be in quarter sections where they are available unless the exhaustion of the acreage which the group may be entitled to select does not permit the selection of a quarter section and shall include all available lands in less than quarter sections. Lands selected shall conform as nearly as practicable to the United States land survey system.

(5) A Native group whose eligibility has not been finally determined may file its land selections as if it were determined to be eligible. The Bureau of Land Management shall release from segregation the lands not selected and shall continue segregation of the selected land until the lands are conveyed or the group is finally determined to be ineligible. However, in the case of a group determined to be ineligible by the Board of Land Appeals, the segregation shall be continued for a period of 60 days from the date of such decision.

(6) Where any conflict in land selection occurs between any eligible Native groups, the Bureau of Land Management shall request the appropriate regional corporation to recommend the manner in which such conflict should be resolved.

(7) The Bureau of Land Management shall issue a decision on the selection of a Native group determined to be eligible and shall serve a copy of such decision by certified mail on the Native group, its regional corporation and any party of record and the decision shall be published in accordance with § 2650.7 of this part.

(8) Appeals from the Bureau of Land Management decision on the selection by a Native group under this section shall be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

[41 FR 14739, Apr. 7, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

§ 2653.7 Sitka-Kenai-Juneau-Kodiak selections.

(a) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, who incorporate under the laws of the State of Alaska, may each select the surface estate of up to 23,040 acres of lands of similar character located in reasonable proximity to those municipalities.

(b) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, shall nominate not less than 92,160 acres of lands within 50 miles of each of the four named cities which are similar in character to the lands in which each of the cities is located. After review and public hearings, the Secretary shall withdraw up to 46,080 acres near each of the cities from the lands nominated. Each corporation representing the Native residents of the four named cities may select not more than one-half the area withdrawn for selection by that corporation. The Secretary shall convey the area selected.

§ 2653.8 Primary place of residence.

(a) An application under this subpart may be made by a Native who occupied land as a primary place of residence on August 31, 1971.

(b) Applications for a primary place of residence must be filed not later than December 18, 1973.

§ 2653.8-1 Acreage to be conveyed.

A Native may secure title to the surface estate of only a single tract not to exceed 160 acres under the provisions of this subpart, and shall be limited to the acreage actually occupied and used. An application for title under this subpart shall be accompanied by a certification by the applicant that he will not receive title to any other tract of land pursuant to sections 14 (c)(2), (h)(2), or 18 of the Act.

§ 2653.8-2 Primary place of residence criteria.

(a) *Periods of occupancy.* Casual or occasional use will not be considered as occupancy sufficient to make the tract applied for a primary place of residence.

(b) *Improvements constructed on the land.* (1) Must have a dwelling.

(2) May include associated structures such as food cellars, drying racks, caches etc.

(c) *Evidence of occupancy.* Must have evidence of permanent or seasonal occupancy for substantial periods of time.

§ 2653.8-3 Appeals.

Appeals from decisions made by the Bureau of Land Management on applications filed pursuant to section 14(h)(5) of the Act shall be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

[41 FR 14740, Apr. 7, 1976]

§ 2653.9 Regional selections.

(a) Applications by a regional corporation for selection of land within its boundaries under section 14(h)(8) of the Act shall be filed with the proper office of the Bureau of Land Management in accordance with § 2650.2(a). Selections made under section 14(h)(1), (2), (3), and (5) of the Act will take priority over selections made pursuant to section 14(h)(8). Lands available for section 14(h)(8) selections are those lands originally withdrawn under section 11(a)(1), (3), or 16(a) of the Act and not conveyed pursuant to selections made under sections 12(a), (b), or (c), 16(b) or 19 of the Act.

(b) A regional corporation may select a total area in excess of its entitlement to ensure that it will obtain its entitlement in the event of any conflicts. Any acreage in excess of its entitlement shall be identified as alternate selections and shall be numerically ordered on a section by section basis to indicate selection preference.

(c) Selections need not be contiguous but must be made along section lines in reasonably compact tracts of at least 5,760 acres, not including any unavailable land contained therein. The exterior boundaries of such tracts shall be in linear segments of not less than two miles in length, except where adjoining unavailable lands or where shorter segments are necessary to follow section lines where township lines are offset along standard parallels caused by the convergence of the meridians. However, selected tracts may contain less than 5,760 acres where there is good cause shown for such selection, taking into consideration good land management planning and principles for the potentially remaining public lands, and which would not leave unduly fragmented tracts of such public lands. Each tract selected shall not be considered to be reasonably compact if (1) it excludes other lands for selection within its exterior boundaries, or (2) an isolated tract of public land of less than 1,280 acres remains after selection of the total entitlement. Regional corporations shall not be precluded from selecting less than 5,760 acres where the entire tract available for selection constitutes less than 5,760 acres. Selection shall conform as nearly as practicable to the United States land survey system.

(d) Notice of the filing of such selections, including the date by which any protest of the selection should be filed, shall be published once in the FEDERAL REGISTER and one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. Any protest to the application should be filed in the Bureau of Land Management office in which such selections were filed within the time specified in the notice.

(e) Appeals from decisions made by the Bureau of Land Management with respect to such selections shall be made to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E.

[41 FR 14740, Apr. 7, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

§ 2653.10 Excess selections.

Where land selections by a regional corporation, Native group, any of the four named cities, or a Native pursuant to section 14(h) (1), (2), (3), or (5) exceed the land entitlement, the Bureau of Land Management may request such corporation to indicate its preference among lands selected.

[41 FR 14740, Apr. 7, 1976]

§ 2653.11 Conveyance reservations.

(a) Conveyances issued pursuant to this subpart are subject to the conveyance reservations described in § 2650.4 of this chapter.

(b) In addition to the reservations provided in paragraph (a) of this section, conveyance for cemetery sites or historical places will contain a covenant running with the land providing that (1) the regional corporation shall not authorize mining or mineral activity of any type; nor shall it authorize any use which is incompatible with or is in derogation of the values of the area as a cemetery site or historical place (standards for determining uses which are incompatible with or in derogation of the values of the area are found in relevant portions of 36 CFR 800.9 (1974); and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity. The covenant placed in this subsection may be released by the Secretary, in his discretion, upon application of the regional corporation grantee showing that extraordinary to circumstances of a nature to warrant the release have arisen subsequent to the conveyance.

(c) Conveyances for cemetery sites and historical places shall also contain the covenant required by § 2650.4-6 of this chapter.

[38 FR 14218, May 30, 1973. Redesignated and amended at 41 FR 14740, Apr. 7, 1976]

Subpart 2654—Native Reserves

§ 2654.0-3 Authority.

Section 19(b) of the Act authorizes any village corporation(s) located within a reserve defined in the act to acquire title to the surface and subsurface estates in any reserve set aside for the use and benefit of its stockholders or members prior to December 18, 1971. Such acquisition precludes any other benefits under the Act.

§ 2654.0-5 Definitions.

Reserve lands means any lands reserved prior to the date of enactment of the act which are subject to being taken in lieu of other benefits under the act pursuant to section 19(b) of the Act.

§ 2654.1 Exercise of option.

(a) Any village corporation which has not, by December 18, 1973, elected to acquire title to the reserve lands will be deemed to have elected to receive for itself and its members the other benefits under the Act.

(b) The election of a village to acquire title to the reserve lands shall be exercised in the manner provided by its articles of incorporation. However when two or more villages are located on the same reserve there must be a special election to acquire title to the reserve lands. A majority vote of all the stockholders or members of all corporations located on the reserve is required to acquire title to the reserve lands. For the purpose of this paragraph the stockholders or members shall be determined on the basis of the roll of village residents proposed to be promulgated under 25 CFR 43h.7.[1] The regional corporation or village corporations or any member or stockholder of the village corporations involved may request that the election be observed by the Bureau of Indian Affairs.

(c) The results of any election by a village corporation or corporations to acquire title to the reserve lands shall be certified by such village corporation or corporations as being in conformity with the articles of incorporation and by-laws of the village corporation or corporations.

§ 2654.2 Application procedures.

(a) If the corporation or corporations elect to take title to the reserve lands, submission to the Secretary of the certificate of election will constitute an application to acquire title to those lands.

(b) If the village corporation or corporations do not elect to take the reserve lands, they shall apply for their land selections pursuant to subpart 2651 of this chapter.

§ 2654.3 Conveyances.

(a) Conveyances under this subpart are subject to the provisions of section 14(g) of the Act, as provided by § 2650.4 of this chapter.

(b) Conveyances under this subpart to two or more village corporations will be made to them as tenants-in-common, having undivided interests proportionate to the number of their respective members or stockholders determined on the basis of the final roll promulgated by the Secretary pursuant to section 5 of the Act.

Subpart 2655—Federal Installations

AUTHORITY: Alaska Claims Settlement Act of 1971 (43 U.S.C. 1601 *et seq.*).

SOURCE: 45 FR 70206, Oct. 22, 1980, unless otherwise noted.

§ 2655.0-3 Authority.

Section 3(e)(1) of the Act provides that the Secretary shall determine the smallest practicable tract enclosing land actually used in connection with the administration of Federal installations in Alaska.

§ 2655.0-5 Definitions.

As used in this subpart, the term:

(a) *Holding agency* means any Federal agency claiming use of a tract of land subject to these regulations.

(b) *Appropriate selection period* means the statutory or regulatory period within which the lands were available for Native selection under the act.

(c) *State Director* means the Director, Alaska State Office, Bureau of Land Management.

§ 2655.1 Lands subject to determination.

(a) Holding agency lands located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) of the Act and subsequently selected by a village or regional corporation under sections 12 or 16, or selected by the regional corporation under sections 12 or 16, or selected by the regional corporation for southeast Alaska in accordance with section 14(h)(8)(B) are subject to a determination made under this subpart.

(b) Lands in the National Park System, lands withdrawn or reserved for national defense purposes and those former Indian reserves elected under section 19 of the Act are not subject to a determination under section 3(e)(1) of the Act or this subpart. Lands withdrawn under section 11(a)(3) or 14(h), except 14(h)(8)(B), of the Act do not include lands withdrawn or otherwise appropriated by a Federal agency and, therefore, are not subject to a determination under section 3(e)(1) of the Act or this subpart.

§ 2655.2 Criteria for determinations.

Land subject to determination under section 3(e)(1) of the Act will be subject to conveyance to Native corporations if they are determined to be public lands under this subpart. If the lands are determined not to be public lands, they will be retained by the holding agency. The Bureau of Land Management shall determine:

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[1] At 47 FR 13327, Mar. 30, 1982, § 43h.7 of Title 25 was redesignated as § 69.7.

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similiar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) Lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary for the particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the Act and § 2650.4-7 of this title.

§ 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the instal-

lation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in paragraph (a) of this section, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the Act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Board of Land Appeals in accordance with 43 CFR part 4, subpart E. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the Act, the matter shall be remanded by the Board of Land Appeals to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the Act and these regulations: *Provided*, That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

Group 2700—Disposition; Sales

NOTE: The information collection requirements contained in parts 2720 and 2740 of Group 2700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0153 and 1004-0012, respectively. The information is being collected to permit the authorized officer to determine if disposition of Federally-owned mineral interests should be made and to determine if disposition of public lands should be made for recreation and public purposes. This information will be used to make these determinations. A response is required to obtain a benefit.

(See 51 FR 9657, Mar. 20, 1986)

PART 2710—SALES: FEDERAL LAND POLICY AND MANAGEMENT ACT

Subpart 2710—Sales: General Provisions

Sec.
2710.0-1 Purpose.
2710.0-2 Objective.
2710.0-3 Authority.
2710.0-5 Definitions.
2710.0-6 Policy.
2710.0-8 Lands subject to sale.

Subpart 2711—Sales: Procedures

2711.1 Initiation of sale.
2711.1-1 Identification of tracts by land use planning.
2711.1-2 Notice of realty action.
2711.1-3 Sales requiring grazing permit or lease cancellations.
2711.2 Qualified conveyees.
2711.3 Procedures for sale.
2711.3-1 Competitive bidding.
2711.3-2 Modified bidding.

Sec.
2711.3-3 Direct sales.
2711.4 Compensation for authorized improvements.
2711.4-1 Grazing improvements.
2711.4-2 Other private improvements.
2711.5 Conveyance documents.
2711.5-1 Mineral reservation.
2711.5-2 Terms, convenants, conditions, and reservations.
2711.5-3 Notice of conveyance.

AUTHORITY: 43 U.S.C. 1713, 1740.

SOURCE: 45 FR 39418, June 10, 1980, unless otherwise noted.

Subpart 2710—Sales: General Provisions

§ 2710.0-1 Purpose.

The regulations in this part implement the sale authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713).

§ 2710.0-2 Objective.

The objective is to provide for the orderly disposition at not less than fair market value of public lands identified for sale as part of the land use planning process.

§ 2710.0-3 Authority.

(a) The Secretary of the Interior is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), to sell public lands where, as a result of land use planning, it is determined that the sale of such tract meets any or all of the following disposal criteria:

(1) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(2) Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership; or

(3) Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

(b) The Secretary of the Interior is authorized by section 310 of the Federal Land Policy and Management Act (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purpose of the Act.

§ 2710.0-5 Definitions.

As used in this part, the term

(a) *Public lands* means any lands and interest in lands owned by the United States and administered by the Secretary through the Bureau of Land Management except:

(1) Lands located on the Outer Continental Shelf;

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(b) *Secretary* means the Secretary of the Interior.

(c) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(d) *Act* means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(e) *Family sized farm* means the unit of public lands determined to be chiefly valuable for agriculture, and that is of sufficient size, based on land use capabilities, development requirements and economic capability, to provide a level of net income, after payment of expenses and taxes, which will sustain a family sized agribusiness operation above the poverty level for a rural farm family of 4 as determined by the Bureau of Labor Statistics, U.S. Department of Labor, for the calender year immediately preceeding the year of the proposed sale under the regulations of this part. The determination of the practical size is an economic decision to be made on a local area basis considering, but not limited to, factors such as: Climatic conditions, soil character, availability of irrigation water, topography, usual crop(s) of the locale, marketability of the crop(s), production and development costs, and other physical characteristics which shall give reasonable assurance of continued production under proper conservation management.

§ 2710.0-6 Policy.

(a) Sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with part 1600 of this title.

(b) Public lands determined to be suitable for sale shall be offered only on the initiative of the Bureau of Land Management. Indications of interest to have specific tracts of public lands offered for sale shall be accomplished through public input to the land use planning process. (See §§ 1601.1-1 and 1601.8 of this title). Nominations or requests to have specific tracts of public lands offered for sale may also be made by direct request to the authorized officer.

(c)(1) The Federal Land Policy and Management Act (43 U.S.C. 1713(f)) provides that sales of public lands under this section shall be conducted under competitive bidding procedures established by the Secretary. However, where the Secretary determines it necessary and proper in order to assure equitable distribution among purchasers of lands, or to recognize equitable considerations or public policies, including, but not limited to, a preference to users, lands may be sold by modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

(i) The State in which the lands are located;

(ii) The local government entities in such State which are in vicinity of the lands;

(iii) Adjoining landowners;

(iv) Individuals; and

(v) Any other person.

(2) When a parcel of land meets the sale criteria of section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713), several factors shall be considered in determining the method of sale. These factors include, but are not limited to: Competitive interest; needs of State and local governments; adjoining landowners; historical uses; and equitable distribution of land ownership.

(3) Three methods of sale are provided for in § 2711.3 of this title: competitive; modified competitive; and direct (non-competitive). The policy for selecting the method of sale is:

(i) Competitive sale as provided in § 2711.3-1 of this title is the general procedure for sales of public lands and may be used where there would be a number of interested parties bidding for the lands and (A) wherever in the judgment of the authorized officer the lands are accessible and usable regardless of adjoining land ownership and (B) wherever the lands are within a developing or urbanizing area and land values are increasing due to their location and interest on the competitive market.

(ii) Modified competitive sales as provided in § 2711.3-2 of this title may be used to permit the existing grazing user or adjoining landowner to meet the high bid at the public sale. This procedure will allow for limited competitive sales to protect on-going uses, to assure compatibility of the possible uses with adjacent lands, and avoid dislocation of existing users. Lands offered under this procedure would normally be public lands not located near urban expansion areas, or with rapidly increasing land values, and existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

(iii) Direct sale as provided in § 2711.3-3 of this title may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by State or local governments or non-profit corporations, or where necessary to protect existing equities in the lands or resolve inadvertent unauthorized use or occupancy of said lands.

(4) When lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale.

(5) In no case shall lands be sold for less than fair market value.

(d) Sales of public lands determined to be chiefly valuable for agriculture shall be no larger than necessary to support a family-sized farm.

(e) The sale of family-sized farm nits, at any given sale, shall be limit- d to one unit per bidder and one unit er family. The limit of one unit per amily is not to be be construed as lim- ing children eighteen years or older om bidding in their own right.

(f) Sales under this part shall not be ade at less than fair market value. uch value is to be determined by an ppraisal performed by a Federal or dependent appraiser, as determined the authorized officer, using the rinciples contained in the *Uniform ppraisal Standards for Federal Land cquisitions*. The value of authorized provements owned by anyone other an the United States upon lands ing sold shall not be included in the termination of fair market value. echnical review and approval for con- rmance with appraisal standards all be conducted by the authorized ficer.

g) Constraint and discretion shall used with regard to the terms, cov- ants, conditions and reservations au- orized by section 208 of the Act that e to be in sales patents and other nveyance documents, except where clusion of such provisions is required law or for protection of valid exist- g rights.

FR 39418, June 10, 1980, as amended at FR 29014, July 17, 1984; 49 FR 29795, y 24, 1984]

10.0-8 Lands subject to sale.

) All public lands, as defined by 10.0-5 of this title, and, which t the disposal criteria specified er § 2710.0-3 of this title, are sub- to sale pursuant to this part, pt:

) Those public lands within the re- ed Oregon California Railroad and nveyed Coos Bay Wagon Road ts which are more suitable for gement and administration for anent forest protection and other oses as provided for in the Acts of st 28, 1937 (50 Stat. 874; 43 U.S.C. a)); May 24, 1939 (53 Stat. 753); ection 701(b) of the Act.

Public lands in units of the Na- Wilderness Preservation m, National Wild and Scenic System and National System of

(3) Public lands classified, withdrawn, reserved or otherwise designated as not available or subject to sale shall not be sold under the regulations of this part until issuance of an order or notice which either opens or provides for such disposition.

(b) Unsurveyed public lands shall not be sold under the regulations of this part until they are officially surveyed under the public land survey system of the United States. Such survey shall be completed and approved by the Secretary prior to any sale.

Subpart 2711—Sales: Procedures

§ 2711.1 Initiation of sale.

§ 2711.1-1 Identification of tracts by land use planning.

(a) Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title.

(b) Public input proposing tracts of public lands for disposal through sale as part of the land use planning process may be made in accordance with §§ 1601.3, 1601.6-3 or § 1601.8 of this title.

(c) Nominations or requests for sales of public lands may be made to the District office of the Bureau of Land Management for the District in which the public lands are located and shall specifically identify the tract being nominated or requested and the reason for proposing sale of the specific tract.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984]

§ 2711.1-2 Notice of realty action.

(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, convenants, conditions and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide 45 days after the date of issuance for the right of comment by the public and interested parties.

(b) Not less than 60 days prior to sale, notice shall be sent to the Member of the U.S. House of Representatives in whose district the public lands proposed for sale are located and the U.S. Senators for the State in which the public lands proposed for sale are located, the Senate and House of Representatives, as required by paragraph (f) of this section, to Governor of the State within which the public lands are located, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands are located. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current land users.

(c) The notice shall be published once in the FEDERAL REGISTER and once a week for 3 weeks thereafter in a newspaper of general circulation in the general vicinity of the public lands being proposed to be offered for sale.

(d) The publication of the notice of realty action in the FEDERAL REGISTER shall segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequent application, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the FEDERAL REGISTER of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

(e) The notice published under § 1610.5 of this title may, if so designated in the notice and is the functional equivalent of a notice of realty action required by this section, serve as the notice of realty action required by paragraph (a) of this section and may segregate the public lands covered by the sale proposal to the same extent that they would have been segregated under a notice of realty action issued under paragraph (a) of this section.

(f) For tracts of public lands in excess of 2,500 acres, the notice shall be submitted to the Senate and the House of Representatives not less than the 90 days prescribed by section 203 of the Act (43 U.S.C. 1713(c)) prior to the date of sale. The sale may not be held prior to the completion of the congressional notice period unless such period is waived by Congress.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984]

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When lands are identified for disposal and such disposal will preclude livestock grazing, the sale shall not be made until the permittees and lessees are given 2 years prior notification, except in cases of emergency, that their grazing permit or grazing lease and grazing preference may be cancelled in accordance with § 4110.4-2(b) of this title. A sale may be made of such identified lands if the sale is conditioned upon continued grazing by the current permittee/lessee until such time as the current grazing permit or lease would have expired or terminated. A permittee or lessee may unconditionally waive the 2-year prior notification. The publication of a notice of realty action as provided in § 2711.1-2(c) of this title shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

[49 FR 29015, July 17, 1984]

§ 2711.2 Qualified conveyees.

Tracts sold under this part may only be conveyed to:

(a) A citizen of the United States 18 years of age or over;

(b) A corporation subject to the laws of any State or of the United States;

(c) A State, State instrumentality or political subdivision authorized to hold property; and

(d) An entity legally capable of con-
eying and holding lands or interests
herein under the laws of the State
ithin which the lands to be conveyed
re located. Where applicable, the
ntity shall also meet the require-
ents of paragraphs (a) and (b) of this
ection.

5 FR 39418, June 10, 1980, as amended at
 FR 29015, July 17, 1984]

2711.3 Procedures for sale.

2711.3-1 Competitive bidding.

When public lands are offered
rough competitive bidding:

(a) The date, time, place, and
anner for submitting bids shall be
pecified in the notice required by
2711.1-2 of this title.

(b) Bids may be made by a principal
r a duly qualified agent.

(c) Sealed bids shall be considered
nly if received at the place of sale
rior to the hour fixed in the notice
nd are made for at least the fair
arket value. Each bid shall be accom-
anied by certified check, postal
oney order, bank draft or cashier's
heck made payable to the Bureau of
and Management for the amount re-
uired in the notice of realty action
hich shall be not less than 10 percent
r more than 30 percent of the
mount of the bid, and shall be en-
losed in a sealed envelope which shall
e marked as prescribed in the notice.
f 2 or more envelopes containing valid
ids of the same amount are received,
e determination of which is to be
onsidered the highest bid shall be by
upplemental biddings. The designated
igh bidders shall be allowed to
ubmit oral or sealed bids as designat-
d by the authorized officer.

(d) The highest qualifying sealed bid
eceived shall be publicly declared by
e authorized officer. If the notice
ublished pursuant to § 2711.1-2 of
is title provides for oral bids, such
ds, in increments specified by the au-
orized officer, shall then be invited.
ter oral bids, if any, are received,
e highest qualifying bid, designated
 type, whether sealed or oral, shall
 declared by the authorized officer.
e person declared to have entered
 highest qualifying oral bid shall
mit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder, whether such bid is a sealed or oral bid, shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of the sale. Failure to submit the full bid price prior to, but not including the 180th day following the day of the sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

(e) If the public lands are not sold pursuant to the notice issued under § 2711.1-2 of this subpart, they may remain available for sale on a continuing basis until sold as specified in the notice.

(f) The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after receipt of such offer unless the offerer waives his right to a decision within such 30-day period. In case of a tract of land in excess of 2,500 acres, such acceptance or rejection shall not be given until the expiration of 30 days after the end of the notice to the Congress provided for in § 2711.1-2(d) of this subpart. Prior to the expiration of such periods the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that:

(1) Consummation of the sale would be inconsistent with the provisions of any existing law; or

(2) Collusive or other activities have hindered or restrained free and open bidding; or

(3) Consummation of the sale would encourage or promote speculation in public lands.

(g) Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984; 49 FR 29795, July 24, 1984]

§ 2711.3-2 Modified bidding.

(a) Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale; or

(iii) Offering to designated bidders the right of first refusal to purchase the lands at fair market value. Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of his preference consideration.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: Needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected shall be specified in the notice of realty action required in § 2711.1-2 of this subpart.

(b) Where 2 or more designated bidders exercise preference consideration awarded by the authorized officer in accordance with paragraph (a)(1) of this section, such bidders shall be offered the opportunity to agree upon a division of the lands among themselves. In the absence of a written agreement, the preference right bidders shall be allowed to continue bidding to determine the high bidder.

(c) Where designated bidders fail to exercise the preference consideration offered by the authorized officer in the allowed time, the sale shall proceed using the procedures specified in § 2711.3-1 of this subpart; and

(d) Once the method of modified competitive or noncompetitive sale is determined and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be by the same instruments as authorized in § 2711.3-1(c) of this subpart.

(e) Acceptance or rejection of any offer to purchase shall be in accordance with the procedures set forth in § 2711.3-1 (f) and (g) of this subpart.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29015, July 17, 1984]

§ 2711.3-3 Direct sales.

(a) Direct sales (without competition) may be utilized, when in the opinion of the authorized officer, a competitive sale is not appropriate and the public interest would best be served by a direct sale. Examples include, but are not limited to:

(1) A tract identified for transfer to State or local government or nonprofit organization; or

(2) A tract identified for sale that is an integral part of a project or public importance and speculative bidding would jeopardize a timely completion and economic viability of the project; or

(3) There is a need to recognize an authorized use such as an existing business which could suffer a substantial economic loss if the tract were purchased by other than the authorized user; or

(4) The adjoining ownership pattern and access indicate a direct sale is appropriate; or

(5) A need to resolve inadvertent unauthorized use or occupancy of the lands.

(b) Once the authorized officer has determined that the lands will be offered by direct sale and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be made by the same instruments as authorized in § 2711.3-1(c) of this subpart.

(c) Failure to accept an offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

(d) Acceptance or rejection of an offer to purchase the lands shall be in accordance with the procedures set forth in § 2711.3-1 (f) and (g) of this subpart.

[49 FR 29015, July 17, 1984; 49 FR 29796, July 24, 1984]

§ 2711.4 Compensation for authorized improvements.

§ 2711.4-1 Grazing improvements.

No public lands in a grazing lease or permit may be conveyed until the provisions of part 4100 of this title concerning compensation for any authorized grazing improvements have been met.

§ 2711.4-2 Other private improvements.

Where public lands to be sold under this part contain authorized private improvements, other than those identified in § 2711.4-1 of this subpart or those subject to a patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner has not been declared the purchaser of the lands sold, or the prospective purchaser may compensate the owner of such authorized private improvements and submit proof of compensation to the authorized officer.

§ 2711.5 Conveyance documents.

§ 2711.5-1 Mineral reservation.

Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met. Where such application has been filed and meets the requirements for conveyance, the authorized officer may withhold issuance of a patent or other document of conveyance on lands sold under this part until processing of the mineral conveyance application is completed, at which time a single patent or document of conveyance for the entire estate or interest of the United States may be issued.

§ 2711.5-2 Terms, covenants, conditions, and reservations.

Patents or other conveyance documents issued under this part may contain such terms, covenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest as authorized by section 208 of the Act.

§ 2711.5-3 Notice of conveyance.

The authorized officer shall immediately notify the Governor and the heads of local government of the issuance of conveyance documents for public lands within their respective jurisdiction.

[45 FR 39418, June 10, 1980, as amended at 49 FR 29016, July 17, 1984]

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

Sec.
2720.0-1 Purpose.
2720.0-2 Objectives.
2720.0-3 Authority.
2720.0-5 Definitions.
2720.0-6 Policy.
2720.1 Application to purchase federally-owned mineral interests.
2720.1-1 Filing of application.
2720.1-2 Form of application.
2720.1-3 Action on application.
2720.2 Determination that an exploratory program is not required.
2720.3 Action upon determination of the fair market value of the mineral interests.
2720.4 Issuance of document of conveyance.
2720.5 Appeals.

AUTHORITY: Secs. 209 and 310 of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 44 FR 1342, Jan. 4, 1979, unless otherwise noted.

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

§ 2720.0-1 Purpose.

The purpose of these regulations is to establish procedures under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, for conveyance of mineral interests owned by the United States where the surface is or will be in non-Federal ownership.

§ 2720.0-2 Objectives.

The objective is to allow consolidation of surface and subsurface or mineral ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

§ 2720.0-3 Authority.

(a) Section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), authorizes the Secretary of the Interior to convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, if certain specific conditions are met.

(b) Section 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1740, authorizes the Secretary of the Interior to promulgate rules and regulations to carry out the purposes of the Act.

§ 2720.0-5 Definitions.

As used in this subpart, the term:

(a) *Prospective record owner* means a person who has a contract or other agreement to purchase a tract of land that is in non-Federal ownership with a reservation of minerals in the United States, or a person who is purchasing a tract of land under the provisions of the Federal Land Policy and Management Act of 1976 or other laws authorizing the conveyance of Federal lands subject to the reservation of a mineral interest.

(b) *Known mineral values* means mineral values in lands with underlying geologic formations which are valuable for prospecting for, develop
or producing natural mineral depos
The presence of such mineral depos
in the lands may be known, or geolo
conditions may be such as to make t
lands prospectively valuable for min
al occurrence.

(c) *Authorized officer* means any e
ployee of the Bureau of Land Manag
ment to whom has been delegated t
authority to perform the duties d
scribed in this part.

(d) Proof of ownership means e
dence of title acceptable in local real
practice by attorneys and title exami
ers and may include a current title a
torney's opinon, based on a current a
stract of title prepared by a bond
title insurance or title abstract comp
ny doing business in the locale whe
the lands are located.

[44 FR 1342, Jan. 4, 1979, as amended at
FR 9657, Mar. 20, 1986]

§ 2720.0-6 Policy.

As required by the Federal La
Policy and Management Act, conve
ance of federally reserved mineral i
terest shall be made only upon a d
termination of no known value or if
can be clearly demonstrated that t
mineral reservation is interfering wi
or precluding appropriate nonminer
development of the lands and th
nonmineral development is a mo
beneficial use than mineral develo
ment. Allegation, hypothesis or spec
lation that such conditions could
may exist at some future time sha
not be sufficient basis for conveyanc
Failure to establish by convincing fa
tual evidence that the requisite cond
tions of interference or preclusio
presently exist, and that nonminer
development is a more beneficial us
shall result in the rejection of an a
plication.

[51 FR 9657, Mar. 20, 1986]

§ 2720.1 Application to purchase federall owned mineral interests.

§ 2720.1-1 Filing of application.

(a) Any existing or prospecti
record owner of the surface of land i
which mineral interests are reserve
or otherwise owned by the Unite

States may file an application to purchase such mineral interests if—

(1) He has reason to believe that there are no known mineral values in the land, or

(2) The reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the land and such development would be a more beneficial use of the land than its mineral development.

(b) Publication in the FEDERAL REGISTER of a notice of the filing of an application under this part shall segregate the mineral interests owned by the United States in the public lands covered by the application to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interests, upon final rejection of the application or 2 years from the date of filing of the application which ever occurs first.

[44 FR 1342, Jan. 4, 1979, as amended at 51 FR 9657, Mar. 20, 1986]

§ 2720.1-2 Form of application.

(a) An application shall be filed with the proper BLM Office as listed in § 1821.2-1(d) of this title.

(b) No specific form is required.

(c) A non-refundable fee of $50 shall accompany the application.

(d) Each application shall include:

(1) The name, legal mailing address, and telephone number of the existing or prospective record owner of the land included in the application;

(2) Proof of ownership of the land included in the application, and in the case of a prospective record owner, a copy of the contract of conveyance or a statement describing the method by which he will become the owner of record;

(3) In the case of non-Federal ownership of the surface, a certified copy of any patent or other instrument conveying the land included in the application and a showing of ownership in the applicant, with supporting survey evidence acceptable to the authorized officer, which may consist of a metes and bounds survey prepared and certified by a civil engineer or land surveyor licensed under the laws of the State in which the lands are located; and

(4) As complete a statement as possible concerning (i) the nature of federally-reserved or owned mineral values in the land, including explanatory information, (ii) the existing and proposed uses of the land, (iii) why the reservation of the mineral interests in the United States is interfering with or precluding appropriate non-mineral development of the land covered by the application (iv) how and why such development would be a more beneficial use of the land than its mineral development, and (v) a showing that the proposed use complies or will comply with State and local zoning and/or planning requirements.

[44 FR 1342, Jan. 4, 1979, as amended at 51 FR 9658, Mar. 20, 1986]

§ 2720.1-3 Action on application.

(a) Within 90 days of receipt of an application to purchase federally-owned mineral interests, the authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit required and so inform the applicant.

(b) No application filed under this subpart shall be processed until the applicant has either—

(1) Deposited with the authorized officer an amount of money that the authorized officer estimates is needed to cover administrative costs of processing, including, but not limited to, costs of conducting an exploratory program, if one is required, to determine the character of the mineral deposits in the land, evaluating the existing data [or the data obtained under an approved exploratory program] to aid in determining the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance, or

(2) Has obtained the consent of the authorized officer to conduct an exploratory program, such program to be conducted only under a plan of operations approved by the authorized officer and deposited with the authorized officer an amount of money the authorized officer estimates is needed

to cover administrative costs of processing, including, but not limited to, costs of evaluating existing data and data submitted from an approved exploratory program to determine the fair market value of the mineral interests to be conveyed and preparing and issuing the documents of conveyance. The authorized officer in reaching a determination as to whether that are any known mineral values in the land and, if so, the estimated costs of an exploratory program, if one is needed, shall rely upon reports on minerals prepared by the Bureau of Land Management.

(c) The authorized officer shall inform the applicant of his determination as to the need for an exploratory program, and where appropriate, the estimated cost of such a program. The applicant may request that the exploratory program be arranged by the authorized officer or request the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, under a plan of operations approved by the authorized officer and to provide the results to the authorized officer for his use and approval. The applicant shall, within 60 days of receipt of such notice, or any extension thereof, respond to the authorized officer's notice, stating whether he wishes to have the authorized officer arrange to have conducted the required exploratory program or requests the consent of the authorized officer to accomplish any required exploratory program by other means. Failure to respond to said notice shall void the application.

(d) If the applicant requests that any required exploratory program be arranged by the authorized officer, he shall submit the sum of money required under paragraph (b) of this section and the authorized officer shall have the exploratory program accomplished so as to aid in determining the fair market value of the Federal mineral interests covered by the application.

(e) If the applicant requests the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, he shall at the time of making his request for such consent, file a plan of operations to carry out any required exploratory program for approval by the authorized officer. Such plan of operations shall be sufficient to provide the resource and economic data needed to aid in determining the fair market value of the Federal mineral interests to be conveyed. Said resource and economic data shall include, where appropriate, but not be limited to, geologic maps, geologic cross-sections, tables and descriptive information encompassing lithologic, geochemical, and geophysical data, assays of samples, drill logs and outcrop sections, which aid in establishing the location, nature, quantity, and grade, and which aid in determining the fair market value of the Federal mineral interests in the land covered by the application. The plan of operations shall conform to the laws, regulations and ordinances of all governmental bodies having jurisdiction over the lands covered by the application. The authorized officer shall decide within 90 days of receipt of said request whether he shall or shall not give his consent. The authorized officer shall not give his consent if he determines that the plan of operations is not adequate to supply the resource and economic data needed to aid him in determining the fair market value of the Federal mineral interests to be conveyed. If the authorized officer, in his discretion, approves the applicant's plan of operations, the applicant may proceed to execute the plan of operations, subject to the supervision of the authorized officer. If the authorized officer does not give his consent to the applicant's request, the applicant may, within 60 days of such refusal, avail himself of the provisions of paragraph (d) of this section. Failure to deposit the required sum within the 60 day period shall void the application. All resource and economic data obtained from the approved exploratory program shall be supplied the authorized officer. The authorized officer shall supply that data needed for determination of the economic value of mineral resources to the Bureau of Land Management. The authorized officer relying upon those determinations shall determine the fair market value of the Federal mineral interests in the land covered by the application. If the authorized officer determines that the resource and economic data supplied from an approved exploratory program is not adequate to aid in determining the fair market value of the Federal mineral interests to be conveyed, he shall so notify the applicant and state what additional data is needed.

(f) Notwithstanding the provisions of the preceding paragraphs of this section, an application may be rejected without the applicant meeting the requirements of paragraph (b) of this section if the authorized officer determines from an examination of the application or of data readily available to him relating to the land concerned that the application does not meet the requirements of the Act.

[44 FR 1342, Jan. 4, 1979, as amended at 51 FR 9658, Mar. 20, 1986]

§ 2720.2 Determination that an exploratory program is not required.

(a) In instances where available data indicate that there are no known mineral values in the land covered by the application, an exploratory program shall not be required.

(b) An exploratory program shall not be required to prove the presence or absence of mineral values where the lands covered by the application are classified prospectively valuable, but such value is found to be only nominal.

§ 2720.3 Action upon determination of the fair market value of the mineral interests.

(a) Upon the authorized officer's determination that all of the requirements of the Act for conveyance of mineral interests have been met by the applicant and all actions necessary to determine the fair market value of the Federal mineral interests in land covered by the application have been completed, the authorized officer shall notify the applicant in writing of the fair market value of the Federal mineral interests, including the administrative costs involved in development of and issuance of conveyance documents, and give a full and complete statement of the costs incurred in reaching such determination including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs of determining the fair market value of the Federal mineral interests exceed the amount of the deposit required of the applicant under this subpart, he will be informed that he is required to pay the difference between the actual costs and the deposit. If the deposit exceeds the administrative costs of determining the fair market value of the Federal mineral interests, the applicant will be informed that he is entitled to a credit for or a refund of the excess. The notice shall also require that payment be made within 90 days from the date of mailing of the notice. Failure to pay the required amount within the allotted time shall constitute a withdrawal of the application and the application will be dismissed and the case closed.

(b) Mineral rights on lands for which an exploratory program is not required under this subpart shall be conveyed upon payment of fair market value for those mineral interests and all administrative costs.

§ 2720.4 Issuance of document of conveyance.

Upon receipt of the payment required by § 2720.3 of this subpart, if any is required, the authorized officer shall issue the necessary document conveying to the applicant the mineral interests of the United States in the land covered by the application.

§ 2720.5 Appeals.

An applicant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to part 4 of this title. Decisions of the authorized officer under this subpart shall be subject to reversal only if found to be arbitrary, capricious, and abuse of discretion or otherwise not in accordance with law.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Subpart 2740—Recreation and Public Purposes Act: General

Sec.

2740.0-1 Purpose.
2740.0-2 Objective.
2740.0-3 Authority.
2740.0-5 Definitions.
2740.0-6 Policy.
2740.0-7 Cross references.

Subpart 2741—Recreation and Public Purposes Act: Requirements

2741.1 Lands subject to disposition.
2741.2 Qualified applicants.
2741.3 Preapplication consultation.
2741.4 Applications.
2741.5 Guidelines for conveyances and leases under the act.
2741.6 Applications for transfer or change of use.
2741.7 Acreage limitations and general conditions.
2741.8 Price.
2741.9 Patent provisions.

Subpart 2742—Recreation and Public Purposes Act: Omitted Lands and Unsurveyed Islands

2742.1 Lands subject to disposition.
2742.2 Qualifications of applicants.
2741.3 Survey requirement.
2742.4 Conveyance limitations.
2742.5 Consistency with other laws.

AUTHORITY: The Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701).

Subpart 2740—Recreation and Public Purposes Act: General

SOURCE: 44 FR 43471, July 25, 1979, unless otherwise noted.

§ 2740.0-1 Purpose.

These regulations provide guidelines and procedures for transfer of certain public lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 *et seq.*), to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes.

§ 2740.0-2 Objective.

The objective is to meet the needs of certain State and local governmental agencies and other qualified organizations for public lands required for recreational and public purposes.

§ 2740.0-3 Authority.

(a) The Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), commonly known as the Recreation and Public Purposes Act, authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes under specified conditions.

(b) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior to convey to States or their political subdivisions unsurveyed islands determined by the Secretary to be public lands of the United States and *omitted lands* under the Recreation and Public Purposes Act without regard to acreage limitations contained in the Act.

§ 2740.0-5 Definitions.

As used in this part, the term:

(a) *Act* means the Recreation and Public Purposes Act as amended by section 212 of the Federal Land Policy and Management Act of 1976.

(b) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(c) *Public lands* means any lands and interest in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(d) *Public purpose* means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to, i.e., and essential part of, the public purpose.

(e) *Conveyance* means a transfer of legal title. Leases issued pursuant to subpart 2912 of this title are not conveyances.

[44 FR 43471, July 25, 1979, as amended at 50 FR 50300, Dec. 10, 1985]

§ 2740.0-6 Policy.

(a) To assure development of public lands in accordance with a development plan and compliance with an approved management plan, the authorized officer may require that public lands first be leased under the provisions of subpart 2912 of this title for a period of time prior to issuance of a patent.

(b) Municipal corporations may not secure public lands under this act which are not within convenient access to the municipality and within the same State as the municipality. Other qualified governmental applicants may not secure public lands outside their political boundaries or other area of jurisdiction.

(c) Where lands are conveyed under the act with a reservation of the mineral estate to the United States, the Bureau of Land Management shall not thereafter convey that mineral estate to the surface owner under the provisions of section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

(d) Lease or conveyance of lands for purposes other than recreational or public purposes is not authorized by the act. Uses which can be more appropriately authorized under other existing authorities shall not be authorized under the act. Approval of leases or conveyances under the act shall not be made unless the public lands shall be used for an established or definitely proposed project. A commitment by lessee(s) or conveyee(s) to a plan of physical development, management and use of the lands shall be required before a lease or conveyance is approved. Use of public lands for nonrecreational or nonpublic purposes, whether by lease or conveyance, may be applied for under sections 203 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1732) or other applicable authorities.

(e) The Bureau of Land Management shall not exercise the exchange authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for the purpose of acquiring lands for later conveyance under the act.

(f) The Bureau of Land Management shall not use Federal funds to undertake determinations of the validity of mining claims on public lands for the sole purpose of clearing title so that the lands may be leased or conveyed under the act.

[44 FR 43471, July 25, 1979, as amended at 50 FR 50300, Dec. 10, 1985]

§ 2740.0-7 Cross references.

(a) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act are contained in subpart 2741 of this chapter.

(b) Requirements and procedures for leasing of land under the Recreation and Public Purposes Act are contained in subpart 2912 of this title.

(c) Requirements and procedures for conveyance of unsurveyed islands and omitted lands under section 211 of the Federal Land Policy and Management Act are contained in subpart 2742 of this chapter.

Subpart 2741—Recreation and Public Purposes Act: Requirements

§ 2741.1 Lands subject to disposition.

(a) The act is applicable to any public lands except (1) lands withdrawn or reserved for national forests, national parks and monuments, and national wildlife refuges, (2) Indian lands and lands set aside or held for use by or for the benefit of Indians, Aleuts and Eskimos, and (3) lands which have been acquired for specific purposes.

(b) Revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands may only be leased to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

(c) Section 211 of the Federal Land Policy and Management Act of 1976 does not apply to public lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System and the National Wild and Scenic Rivers System.

[44 FR 43472, July 25, 1979]

§ 2741.2 Qualified applicants.

Applications for any recreational or public purpose may be filed by States, Federal and State instrumentalities and political subdivisions, including counties and municipalities, and nonprofit associations and nonprofit corporations that, by their articles of incorporation or other authority, are authorized to acquire land.

[44 FR 43472, July 25, 1979]

§ 2741.3 Preapplication consultation.

(a) Potential applicants should contact the appropriate District Office of the Bureau of Land Management well in advance of the anticipated submission of an application. Early consultation is needed to familiarize a potential applicant with management responsibilities and terms and conditions which may be required in a lease or patent.

(b) Any information furnished by the applicant in connection with preapplication activity or use, which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) Dependent upon the magnitude and/or public interest associated with the proposed use, various investigations, studies, analyses, public meetings and negotiations may be required of the applicant prior to the submission of the application. Where a determination is made that studies and analyses are required, the authorized officer shall inform the potential applicant of these requirements.

(d) The potential applicant may be permitted to go upon the public lands to perform casual acts related to data collection necessary for development of an acceptable plan of development as required in § 2741.4(b) of this title. These casual acts include, but are not limited to:

(1) Vehicle use on existing roads;

(2) Sampling;

(3) Surveys required for siting of structures or other improvements; and

(4) Other activities which do unduly disturb surface resources. however, the authorized officer de mines that appreciable impacts to face resources may occur, he/she require the potential applicant obtain a land use authorization per with appropriate terms and conditi under the provision of part 2920 this title.

[50 FR 50300, Dec. 10, 1985]

§ 2741.4 Applications.

(a) Applications shall be submitt on forms approved by the Directo Bureau of Land Management.

(b) Each application shall be accon panied by three copies of a statemen describing the proposed use of th land. The statement shall show tha there is an established or definitel proposed project for such use of th land, present detailed plan and sched ule for development of the project an a management plan which includes description of how any revenues wi be used. The provisions of § 1821.2 o this title apply to filings pursuant t this section.

(c) Each application shall be accom panied by a nonrefundable filing fe of $100. The filing fee shall be re quired for new applications as well a for applications for change of use o transfer of title filed under § 2741.6 o this title.

[44 FR 43472, July 25, 1979. Redesignate and amended at 50 FR 50300, Dec. 10, 198

§ 2741.5 Guidelines for conveyances an leases under the act.

(a) Public lands shall be conveyed o leased under the act only for an estab lished or definitely proposed projec for which there is a reasonable timeta ble of development and satisfactor development and management plans.

(b) No public lands having nationa significance shall be conveyed pursu ant to the act.

(c) No more public lands than ar reasonably necessary for the propose use shall be conveyed pursuant to th act.

(d) For proposals involving over 6 acres, public lands shall not be sold o leased pursuant to this act until:

(1) Comprehensive land use plans and zoning regulations for the area in which the lands are located have been adopted by the appropriate State or local authorities.

(2) The authorized officer has held at least one public meeting on the proposal.

(e) Applications shall not be approved unless and until it has been determined that disposal under the act would serve the national interest following the planning requirements of section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712).

(f) Public lands may be determined to be suitable for lease or sale under the act by the authorized officer on his own motion as a result of demonstrated public needs for public lands for recreational or public purposes during the planning process described in section 202 of the Federal Land Policy and Management Act.

(g) Lands under the jurisdiction of another agency shall not be determined to be suitable for lease or sale without that agency's approval.

(h)(1) A notice of realty action which shall serve as a classification of public lands as suitable or unsuitable for conveyance or lease under the act shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the proposed effective date of the classification action. Notices specifying public lands classified as suitable shall include: the use proposed; whether the lands are to be conveyed or leased; and the terms, covenants, conditions and reservations which shall be included in the conveyance or lease document. The notice shall provide at least 45 days from the date of issuance for submission of public comments.

(2) If the notice of realty action states that the lands are classified as suitable for conveyance or lease under the act, it shall segregate the public lands described in the notice from appropriation under any other public land law, including locations under the mining laws, except as provided in the notice or any amendments or revisions to the notice. If, after 18 months following the issuance of the notice, an application has not been filed for the purpose for which the public lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in the notice shall return to their former status without further action by the authorized officer.

(3) The notice of realty action shall be published once in the FEDERAL REGISTER and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands covered by the notice.

(4) The notice published under § 1610.5-5 of this title, if designated in the notice, shall serve as the notice of realty action required by this section and shall segregate the public lands as stated in the notice. Any such notice given under § 1610.5-5 of this title shall be published and distributed under the provisions of this section.

(i) The authorized officer may effect a conveyance for a sanitary landfill on public lands if the ultimate use of the public lands after completion of landfill activities shall be for a recreational or public purpose.

(j) The Act shall not be used to provide sites for the disposal of permanent or long-term hazardous wastes.

[44 FR 43472, July 25, 1979. Redesignated at 51 FR 50300, Dec. 10, 1985, and amended at 50 FR 50301, Dec. 10, 1985; 51 FR 1795, Jan. 15, 1986]

§ 2741.6 Applications for transfer or change of use.

(a) Applications under the act for permission to add to or change the use specified in a patent or applications to transfer title to a third party shall be filed as prescribed in § 2741.4 of this title.

(b) Applications for transfer of title are subject to the acreage limitations as prescribed in § 2741.7(a) of this title.

(c) Prior to approval of an application filed under this section, the public lands may be reappraised in accordance with § 2741.8 of this title and the beneficiary required to make such payments as are found justified by the reappraisal.

[44 FR 43472, July 25, 1979. Redesignated at 51 FR 50300, Dec. 10, 1985, and amended at 50 FR 50301, Dec. 10, 1985]

§ 2741.7 Acreage limitations and general conditions.

(a) Conveyances under the Act to any applicant in any one calendar year shall be limited as follows:

(1) Any State or State agency having jurisdiction over the State park system may acquire not more than 6,400 acres for recreational purposes and such additional acreage as may be needed for small roadside parks and rest sites of 10 acres or less each.

(2) Any State or agency or instrumentality of such State may acquire not more than 640 acres for each of its programs involving public purposes other than recreation.

(3) Any political subdivision of a State may acquire for recreational purposes not more than 6,400 acres, and for public purposes other than recreation an additional 640 acres. In addition, any political subdivision of a State may acquire such additional acreage as may be needed for roadside parks and rest sites of not more than 10 acres each.

(4) If a State or political subdivision has failed in any one calendar year to receive 6,400 acres (not counting public lands for small roadside parks and rest sites) and had an application on file on the last day of that year, the State, State park agency or political subdivision may receive additional public lands to the extent that the conveyances would not have exceeded the limitations for that year.

(5) Any nonprofit corporation or nonprofit association may acquire for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(6) Acreage limitations described in this section do not apply to conveyances made under section 211 of the Federal Land Policy and Management Act of 1976.

(b) Conveyances within any State shall not exceed 25,600 acres for recreational purposes per calendar year, except that should any State park agency or political subdivision fail in one calendar year to receive 6,400 acres other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State park agency or political subdivision pursuant to any application on file on the last day of said year to the extent that the conveyances would not have exceeded the limitations of said year.

(c) No patents shall be issued under the act unless and until the public lands are officially surveyed. This requirement does not apply to islands patented under the authority of section 211(a) of the Federal Land Policy and Management Act of 1976.

(d) All leases and patents issued under the act shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior. Where such reserved minerals are subject to disposition under the provisions of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Materials Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*) and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), the regulations contained in Subchapter C of this title shall be utilized.

[44 FR 43472, July 25, 1979. Redesignated a 51 FR 50300, Dec. 10, 1985, and amended a 50 FR 50301, Dec. 10, 1985]

§ 2741.8 Price.

(a) Conveyances for recreational or historic-monument purposes to a State, county, or other State or Federal instrumentality or political subdivision shall be issued without monetary consideration.

(b) All other conveyances shall be made at prices established by the Secretary of the Interior through appraisal or otherwise, taking into consideration the purpose for which the land is to be used.

(c) Patents shall be issued only after payment of the full purchase price by a patent applicant.

[44 FR 43472, July 25, 1979. Redesignated a 50 FR 50300, Dec. 10, 1985]

§ 2741.9 Patent provisions.

(a) All patents under the act shall provide that title shall revert upon a finding, after notice and opportunity for a hearing, that, without the approval of the authorized officer:

(1) The patentee or its approved successor attempts to transfer title to or control over the lands to another;

(2) The lands have been devoted to a use other than that for which the lands were conveyed;

(3) The lands have not been used for the purpose for which they were conveyed for a 5-year period; or

(4) The patentee has failed to follow the approved development plan or management plan.

(b) Patents shall also provide that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits his agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex or national origin.

[44 FR 43472, July 25, 1979. Redesignated at 50 FR 50300, Dec. 10, 1985]

Subpart 2742—Recreation and Public Purposes Act: Omitted Lands and Unsurveyed Islands

SOURCE: 44 FR 41794, July 18, 1979, unless otherwise noted. Redesignated at 50 FR 50301, Dec. 10, 1985.

§ 2742.1 Lands subject to disposition.

Omitted lands and unsurveyed islands may be conveyed to States and their local political subdivisions under the provisions of section 211 of the Federal Land Policy and Management Act (43 U.S.C. 1721).

[50 FR 50301, Dec. 10, 1985]

§ 2742.2 Qualifications of applicants.

States and their political subdivisions are qualified applicants.

§ 2742.3 Survey requirement.

(a) Islands. (1) Survey is not necessary. However, unsurveyed islands shall be determined by the Secretary to be public lands of the United States.

(2) Islands shall be surveyed at the request of the applicant, as provided in part 9185 of this chapter.

(b) Determination as to whether lands, other than islands, are public lands of the United States erroneously or fraudulently omitted from the original surveys shall be by survey. Surveys shall be in accordance with the requirements of part 9185 of this title.

§ 2742.4 Conveyance limitations.

(a) No conveyances shall be made under this section until the relevant State government, local government, and areawide planning agency have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(b) At least 60 days prior to offering for sale or otherwise conveying public lands under this section, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land-use regulatory jurisdiction in the geographical area within which such lands are located in order to afford the appropriate body the opportunity to zone or otherwise regulate change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance.

(c) Conveyances under this section may be made without regard to acreage limitations contained in the Recreation and Public Purposes Act.

§ 2742.5 Consistency with other laws.

The provision of the Recreation and Public Purposes Act prohibiting disposal for any use authorized under any other law does not apply to conveyances under this subpart.

PART 2760—TOWNSITES

Subparts 2760–2763—[Reserved]

Subpart 2764—Reclamation Projects

Sec.
2764.1 Procedure governing appraisement and sale.
2764.2 Installment payments.
2764.3 Reappraisement and sale of unsold lots.
2764.4 Public reserves; patents therefor.

Sec.

Subpart 2765—Grant of Lands in Reclamation Townsites for School Purposes

2765.1 Application to be made by school district; action thereon.

AUTHORITY: R.S. 2478, R.S. 2380-2389, as amended, 2391-2394, secs. 1,3,4, 19 Stat. 392, as amended, sec. 16, 26 Stat. 1101, 26 Stat. 502, 32 Stat. 820; 43 U.S.C. 1201, 711-731.

Subparts 2760–2763—[Reserved]

Subpart 2764—Reclamation Projects

SOURCE: 35 FR 9625, June 13, 1970, unless otherwise noted.

§ 2764.1 Procedure governing appraisement and sale.

The Commissioner of Reclamation shall from time to time, with the concurrence of the appropriate officer of the Bureau of Land Management, authorize the appraisement and sale of lots in reclamation townsites. Notices of sale will be issued and other actions taken by those officers in accordance with the townsite regulations contained in §§ 2760.0-3, 2761.1 and 2761.2.

§ 2764.2 Installment payments.

Under authority of section 2 of the Act of June 11, 1910 (36 Stat. 466; 43 U.S.C. 565), the order for sale may authorize the payment of the purchase price of lots, sold in townsites created under the laws in said act mentioned, to be made in annual installments.

§ 2764.3 Reappraisement and sale of unsold lots.

The Commissioner of Reclamation, with the concurrence of the authorized officer of the Bureau of Land Management, may direct that unsold lots shall be reappraised under the first section of the said Act of June 11, 1910 (36 Stat. 465; 43 U.S.C. 564). The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value.

§ 2764.4 Public reserves; patents therefor.

The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances, the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required in § 2766.1.

Subpart 2765—Grant of Lands in Reclamation Townsites for School Purposes

§ 2765.1 Application to be made by school district; action thereon.

(a) At any time after the approval of the survey of any Government reclamation townsite and the subdivision thereof into town lots, with appropriate reservations for public purposes, a school district, in order to obtain title under the Act of October 31, 1919 (41 Stat. 326; 43 U.S.C. 570), should file through its proper officers, its application for patent to the unreserved, unappropriated, undisposed of lands it may desire, not exceeding 6 acres in area, therein, specifically describing the same by lot and block numbers, as delineated and designated on the approved townsite plat; submit sufficient and satisfactory reasons showing that the area applied for is needed for its use; that the land is unappropriated and subject to disposition under the Act, in order that the Department of the Interior may be fully advised that there is no adverse claim for the land applied for; and therewith furnish the certificate of the superintendent of public instruction, or other officer performing such function, having jurisdiction over the county in which the townsite is situate, showing that the district is a duly organized district under the laws of the State and entitled to hold real estate in its corporate name.

(b) The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the official having charge of the project in hich the land is located, showing at the disposal of the land applied r will not in any manner interfere ith said project, such statement aving been previously approved by e Commissioner of Reclamation.

(c) There is no limit to the number applications which may be filed by qualified school district, the only nitation being that the total acreage ich may be patented to such a disct shall not exceed 6 acres in area thin any Government reclamation wnsite situated within such school strict. Whenever, therefore, more an one application is filed by the me applicant, such applicant should fer by serial number, to all previous plications filed by it.

d) The application and proof must filed in the proper office wherein e land applied for is situate, and if e authorizing officer thereof finds e same sufficient and if the Bureau Reclamation makes favorable port upon the said application, the thorizing officer will issue certifie of entry, the same to provide that any land so conveyed cease entirely be used for school purposes title ereto shall revert to and revest in e United States.

FR 9625, June 13, 1970]

PART 2780—SPECIAL AREAS

Subpart 2781—State Irrigation Districts

1.0-3 Authority.
1.1 Procedures.
1.1-1 Application by a district for approval.
1.1-2 Proof of organization.
1.1-3 Evidence of water right.
1.1-4 Maps and details to be shown thereon.
1.1-5 Plans and specifications.
1.1-6 Complete data required.
1.1-7 Statements and certificates on maps.
1.1-8 Application for right-of-way.
.2 Lands included.
.2-1 Identification of unsurveyed lands.
.2-2 Lands in more than one land district.
.3 Requirements when lands are to be claimed by Bureau of Reclamation.
.4 Taxes and assessments.
.5 Status of lands.
.5-1 Status of lands within approved rrigation districts.
2781.5-2 Entries under the Reclamation Act.
2781.5-3 Entry of lands unentered when tax or assessment was levied; section 5, Act of August 11, 1916.
2781.6 When tax title will not be recognized.
2781.7 Reentry of land covered by canceled entries; section 6, Act of August 11, 1916.
2781.8 Cash entries; section 6, Act of August 11, 1916.
2781.9 Application to purchase.
APPENDIX A TO PART 2780

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

Subpart 2781—State Irrigation Districts

SOURCE: 35 FR 9628, June 13, 1970, unless otherwise noted. Redesignated at 50 FR 46771, Nov. 13, 1985.

§ 2781.0-3 Authority.

The Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630) empowers the Secretary of the Interior, following the presentation of proper applications, to investigate the plans and financial and physical resources of irrigation districts theretofore or thereafter organized pursuant to the law of any State, and if he shall find and conclude that any such applicant has planned and is executing an altogether meritorious and feasible irrigation undertaking, to grant his approval of its plan and undertaking, provided a majority of acreage thereof is not unentered land, to the end that upon such approval, and upon compliance by such districts with the conditions in said act specifically set forth, all unentered public land and land which has been entered, but upon which certificate has not issued, shall be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes to the same extent and upon like terms as are privately owned lands within the district. This includes the right of the district to levy and collect taxes on unpatented land for the purpose of raising funds with a view to the construction, operation, and maintenance of the irrigation system, but does not grant the right to tax generally or for any purpose not definitely connected with the construction and maintenance of the irrigation works. The right of the district to sell lands which were entered at the date of the levy of any such lawful tax or assessment remaining unpaid is also provided for, together with the right of individuals to make entry of such land after the period of redemption from tax sales has expired.

§ 2781.1 Procedures.

§ 2781.1-1 Application by a district for approval.

Any irrigation district desiring to obtain the benefits of the Act of August 11, 1916, should file in the proper office for the district within which the lands are situated an application, in duplicate, consisting of the following:

(a) A statement setting forth concisely the legal address of the district; the date when, by court decree or otherwise, it was finally declared to be fully organized; the name and title of all officers of the district qualified at the date of the filing of the application; the gross amount of land embraced in the district; the amount of irrigable land within the district; the amount of privately owned land within the district; the amount of entered land for which final certificate has not issued; the amount of unentered public land; the amount of land embraced within a withdrawal for a United States reclamation project; the amount of land otherwise withdrawn (within Indian, forest, power-site, or other withdrawal); how much (percent) of the project has been completed; what bond issue, if any, has been finally consummated, and the present bonded debt; whether contract has been made with the United States under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 *et seq.*), or is pending, and if any such, the date thereof; and any other facts or circumstances which would throw light on or be pertinent to a full understanding of the present condition or future prospects of the district.

(b) Proof of organization.

(c) Evidence of water right and sufficiency of available water supply.

(d) Maps showing the project.

(e) Plans and specifications.

(f) Such data as may be necessary to a full understanding of the situation.

(g) All applications by State irrigation districts for approval under the Act of August 11, 1916, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2781.1-2 Proof of organization.

A properly authenticated copy in duplicate of the proceedings through which the district claims corporate existence should be filed. The character of this proof will, of course, depend upon the State statute under which the organization was effected.

§ 2781.1-3 Evidence of water right.

If the lands to be reclaimed are wholly withdrawn lands within a United States reclamation project, and the right to the use of the water depends solely upon an appropriation by the Government, no evidence of water right will be required; but if dependence is placed upon any water appropriation other than one claimed by the Government, either for the reclamation of the whole or a portion of the lands sought to be made subject to the Act of August 11, 1916, certified copies of such instruments as will show title to the water rights claimed should be filed with the application. A statement as to whether the stream or other body of water from which the water supply is to be secured has been adjudicated, and if so, the court in which the decree was granted and the date thereof, should be given. If water measurements have not been taken, a detailed report showing the foundation for the belief that sufficient water exists should be filed.

§ 2781.1-4 Maps and details to be shown thereon.

(a) There should also be filed in duplicate with the application tracings showing by smallest legal subdivision, in accordance with the latest official survey, all of the lands embraced within the confines of the district; the status of the various tracts should be differentiated, by markings on each legal subdivision, in black India ink, letters corresponding to the status of the land, as follows:

(1) Privately owned land.

(2) Lands which have been entered but for which certificate has not been issued.

(3) Lands withdrawn under the Reclamation Act.

(4) Lands otherwise withdrawn.

(5) Unentered public lands.

NOTE: If a tract of land appears to come within two of the designations, both letters should be used.

(b) Unless one-eighth of any smallest legal subdivision is susceptible of reclamation from the irrigation system as planned or constructed, the district should not request its designation, except where it is shown that such irrigable area, where less than one-eighth of the subdivision, will when reclaimed be more valuable than the entire subdivision in its native state.

(c) These tracings should be made on tracing linen with India ink. Three scales are permissible: 2,000 feet to the inch, 1,000 feet to the inch, or 500 feet to the inch. No other scales should be used, and the scale most adaptable to a clear showing of the matters and things set forth thereon should be used, but in no case should any one tracing be over 36 inches in width.

(d) The tracings should also show the outlines, properly tied, of any reservoirs, canals, ditches, power plants, transmission lines, or other aids to reclamation which are included in the system as well as cross sections, properly drawn to scale, of dams and canals.

(e) If the irrigation system relied upon for the reclamation of the lands within the district is entirely a United States reclamation project, it will be unnecessary to furnish a map. See section 3 of the Act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773). If, however, public lands are to be reclaimed, in whole or in part, by means other than under a United States reclamation project, such system or the portion thereof not connected with the United States reclamation project should be shown by map.

§ 2781.1-5 Plans and specifications.

(a) If the district irrigation works have been constructed, either fully or partially, plans and specifications of the principal structures, sufficient to show the designs and methods of construction, prepared by a competent engineer, should be filed together with an authenticated statement of the amount actually expended upon the construction and the estimated amount necessary to complete the system.

(b) If no construction has been undertaken, preliminary plans showing the estimated cost of the project and the salient features thereof in sufficient detail to establish the feasibility of the project will be sufficient.

§ 2781.1-6 Complete data required.

As each project must necessarily stand or fall upon its own merits, it will be impossible to specify minutely all of the data that may be required. In every instance, however, the data should be so full and complete as to place before the authorized officer all of the information necessary to an intelligent consideration of the feasibility of the project as a whole. Additional information may be required if the data stated upon the original application prove insufficient.

§ 2781.1-7 Statements and certificates on maps.

Each of the maps filed with the application for recognition should bear the certificate of the president or other presiding or chief officer of the district, countersigned by the secretary, clerk, or other recording officer and attested by the seal of the district, in accordance with Form No. 1. (See Appendix A.) They should also bear the statement of the district's chief engineer, in accordance with Form No. 2. (See Appendix A.) This certificate and statement should be inscribed upon the maps in India ink.

§ 2781.1-8 Application for right-of-way.

If any unpatented public land or any reservation of the United States is affected by any of the proposed works of the irrigation district, application for right-of-way therefor must be filed by the district under the appropriate act before the application for recognition will be finally approved.

§ 2781.2 Lands included.

§ 2781.2-1 Identification of unsurveyed lands.

Where any proposed district includes within its confines unsurveyed lands, the lines of survey nearest such unsurveyed lands will be protracted.

§ 2781.2-2 Lands in more than one land district.

Where the lands within the confines of the proposed irrigation district lie within the jurisdiction of more than one proper office, it will only be necessary to file the data in duplicate in one of the proper offices; a blueprint copy of the map and one copy of the statement, however, should be filed in the other proper offices, together with a notice to the authorizing officer that the application, in duplicate, has been filed in the other proper office (naming it).

§ 2781.3 Requirements when lands are to be claimed by Bureau of Reclamation.

(a) Section 3 of the Act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773), provides as follows:

> That upon the execution of any contract between the United States and any irrigation district pursuant to this Act, the public lands included within such irrigation district when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the Act entitled "An Act to promote the reclamation of arid lands," approved August 11, 1916: *Provided*, That no map or plan is required by section 3 of the said Act need be filed by the irrigation district for approval by the Secretary of the Interior.

(b) This section is construed as an amendment of the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), in that it makes unnecessary the filing of a map or plan of the district for the approval of the Secretary of the Interior in those cases where the lands within a district are to be reclaimed by the Bureau of Reclamation under a contract between the Secretary of the Interior and the irrigation district entered into under the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in lieu thereof provides for the designation by the terms of such contract of the public lands included in such a district where subject to entry and entered lands on which no final certificates shall have been issued, such designation to make the land subject to all the provisions of the Act of August 11, 1916.

(c) Accordingly it will not be necessary for a district, under such circumstances, to file formal application for the designation of the land, as provided for in the Act of August 11, 1916, but in connection with its negotiations with the Secretary of the Interior for the construction of the irrigation system or for repayment of cost if already constructed, it should make request for the designation of the lands under the Act of August 11, 1916, filing a list thereof.

(d) In such a case the contract between the Secretary of the Interior and the irrigation district must contain a description according to the approved plats of survey of the lands within such district, properly subject to designation under said Act of August 11, 1916, and the approval of such a contract by the Secretary unless otherwise stipulated, will have the effect of designating the lands as provided for in said act and making them subject to all the provisions thereof.

(e) The Bureau of Reclamation will require the district to present a list of the land which it desires to have designated under the Act of August 11, 1916. From this list the Bureau of Reclamation will eliminate tracts which for any reason will not be irrigated (at least to such an extent as to make the irrigable portion more valuable than the whole tract when unreclaimed) by the system as constructed or to be constructed.

(f) These lists should then be referred by the Bureau of Reclamation to the Bureau of Land Management with a view to the elimination of any lands not subject to entry, whereupon the remaining tracts will be included in the contract between the district and the Secretary of the Interior.

(g) The Commissioner of the Bureau of Reclamation will furnish the Director of the Bureau of Land Management with two copies of all such contracts, together with two blue-print maps of the district.

§ 2781.4 Taxes and assessments.

(a) Where an irrigation district has been approved by the Secretary of the interior the district must, after each assessment, file with the authorizing officer of the proper office for the district within which the lands of the irrigation district are situated, an officially certified list showing the amount assessed against each smallest legal subdivision of unentered or entered and unpatented public land within the district, which list shall contain a statement that such assessment was made in due form in compliance with the provisions of the State law and of this Act. Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void.

(b) Where contracts made between the United States and irrigation districts involving public lands of the United States inhibit the assessment of unentered public land while in that status, the provisions of such contracts must, of course, be complied with by the district.

§ 2781.5 Status of lands.

§ 2781.5-1 Status of lands within approved irrigation districts.

(a) For the purpose of entry, the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), may be considered as dividing the unpatented lands within a State irrigation district into two general classes, namely, lands withdrawn under the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 *et seq.*), and lands not so withdrawn.

(b) For the purpose of administration the lands within such a district may be considered as divided into the following subordinate classes:

(1) Unpatented public lands when subject to entry.

(2) Entered unpatented lands.

(3) Entered lands which shall become vacant by relinquishment or cancellation for any cause.

(c) The approval of a legally organized irrigation district by the Secretary of the Interior under said acts, unless otherwise provided by contract between the district and the United States, makes the public lands within such district, when subject to entry, and the entered lands on which no final certificates have issued, subject to a lien for all taxes and assessments thereafter lawfully levied by the district to the same extent and in the same manner as lands of a like character held under private ownership.

§ 2781.5-2 Entries under the Reclamation Act.

(a) Lands within an approved irrigation district withdrawn under the Act of June 17, 1902 (32 Stat. 388), shall during the continuance of such withdrawal be subject to entry only in the manner provided by said act, and amendments thereto and the regulations thereunder.

(b) When lands included in entries made under the Act of June 17, 1902, are sold for nonpayment of district taxes or assessments the purchaser on the presentation of proper evidence of his tax title shall be considered as one holding a complete and valid assignment under the Act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), and shall perfect the entry in the same manner required of an assignee under said act.

(c) The evidence of such tax title shall be the same as hereinafter provided in the case of an applicant under tax title for land not subject to the Reclamation Act.

§ 2781.5-3 Entry of lands unentered when tax or assessment was levied; section 5, Act of August 11, 1916.

(a) Public lands within an approved irrigation district which were unentered at the time any tax or assessment was levied against same shall not be sold for such tax or assessment, but same shall be and continue a lien upon such land, and not more than 160 acres of such land shall be entered by any one person, and when such land shall be applied for after the approval of the district by the Secretary of the Interior, under the homestead or desert-land laws, the applicant shall be required to present a certificate from the proper district or county officer showing that no unpaid district charges are due, or delinquent, against said land.

(b) Any such application for lands of this character, if unaccompanied by the required certificate, will be suspended for 30 days to enable the applicant to present such certificate, and if not furnished, the application will be rejected, subject to the right of appeal.

§ 2781.6 When tax title will not be recognized.

No application to enter or purchase land within an approved irrigation district under tax-sale title will be allowed if the sale was for taxes or assessments levied prior to the approval of the district by the Secretary of the Interior.

§ 2781.7 Reentry of land covered by canceled entries; section 6, Act of August 11, 1916.

(a) In case where any tract of entered land within an approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall, in addition to the qualifications and requirements otherwise provided, be required to furnish satisfactory proof by certificate from the proper district or county officer showing that he has paid all charges due to the district upon said land, and also that he has paid to the proper district or county officer for the holder, or holders, of any tax certificate, delinquency certificate, or other proper evidence of tax sale, the amount for which said land was sold at tax sale, together with the interest and penalties thereon provided by law.

(b) Entries for such land will be limited to 160 acres, as such lands come within the general description of "unentered" lands.

(c) It will be observed that as to such land the requirement as to payment of taxes, assessments, interest, and penalties applies to any subsequent applicant therefor and not solely to applicants under the homestead and desert-land law as in the first instance.

(d) If the application is not accompanied by this evidence the authorizing officer will suspend same for 30 days, and if the necessary proof of the required payments is not made within such time he will reject the application, subject to the right of appeal.

(Sec. 5, 39 Stat. 508; 43 U.S.C. 627)

§ 2781.8 Cash entries; section 6, Act of August 11, 1916.

(a) In case of entered lands within an approved irrigation district not subject to the Reclamation Act of June 17, 1902 (32 Stat. 388), the purchaser thereof at tax sale, or his assignee (no redemption having been made), may receive patent to the land upon the payment to the authorizing officer of the proper office of the minimum price of $1.25 per acre, or such other price as may be fixed by law for such land, together with the usual fees and commissions charged in entries of like land under the homestead laws, and upon satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land.

(b) However, such purchaser or his assignee shall at the time of application for patent have the qualifications of either a homestead or desert-land entryman, and not more than 160 acres of such land shall be patented to any one purchaser.

(c) If the purchaser at tax sale, or his assignee, shall not within 90 days after the time for redemption has expired pay to the proper authorizing officer all fees and commissions and the purchase price to which the United States shall be entitled, as provided in this act, any person having the qualifications mentioned may pay to the proper authorizing officer for not more than 160 acres of such land the unpaid purchase price, fees, and commissions to which the United States may be entitled, and upon satisfactory proof that he has paid to the purchaser at tax sale, or to his assignee, or to the proper officer of the district for such purchaser, or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges, or bid in by the district at such sale, and in addition

hereto the interest and penalties on
he amount bid at the rate allowed by
aw, shall be subrogated to the rights
f such purchaser to receive patent for
aid land.

2781.9 Application to purchase.

(a) An application to purchase under
e Act of August 11, 1916, and the
roofs required therewith must be
gned by the applicant but need not
e under oath.

(b) The application shall contain a
scription according to the approved
ats of survey of the land sought to
purchased and shall give the serial
umber or numbers of the entry or en-
es in which the land is then includ-
. The applicant shall also show by
e evidence required in such cases
at he has the qualifications of a
mestead or desert-land entryman,
rnishing the proof thereof.

c) He must show whether he is ap-
ving as purchaser at tax sale, as as-
nee of such purchaser, or is seeking
be subrogated to the right of such
rchaser or assignee.

d) The application shall not em-
ce less than a legal subdivision or
re than 160 acres and shall not in-
de land in more than one land dis-
t and shall be accompanied by the
al fees and commissions provided
entries of like land under the home-
ad laws, together with the purchase
e of the land, not less than $1.25
acre, or such other price as may be
ed by law for such land.

) As the laws governing the sale of
ds for taxes are not the same in the
eral States affected by this act, and
in some instances more than one
hod of conducting sales is permit-
, and as the period in which re-
ption may be made varies, it is not
ught advisable to formulate specif-
ules governing proof of tax titles.
wever, the following general rules
t be observed:

) If the tax title is based on court
eedings a copy of the decree or
r of the court under the seal of
clerk of the court must be fur-
ed. The certificate of the clerk of
t should make specific reference
he laws governing such sale and
that the period of redemption
has expired without redemption having been made, citing the statute.

(2) If the sale was made by the district or under other than court proceedings the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

(3) No application to purchase under this act will be accepted for lands included in more than one pending entry unless necessary in order to make the 160 acres maximum area to which the applicant may be entitled, but in such event the land applied for must, if practicable, be contiguous, and if not contiguous, as nearly so as the circumstances will permit.

(4) If the application is not complete in substance, or based on an unredeemable tax title, the authorizing officer will hold same for rejection, subject to the usual right of appeal. If the application is found satisfactory and complete in all respects he will notify the entryman or entrymen, of the land affected and alleged to have been sold at tax sale, of the filing of the application to purchase such land, and that because thereof the entry, or entries are held for cancellation (to the extent affected by such sale) subject to the usual right of appeal.

(5) If the application is without objection and contains the evidence herein required and water has been made available for the land, certificate will be issued by the authorizing officer. If an appeal is filed, the same will be considered and disposed of in the usual manner.

(6) If all be found regular and sufficient, except that the irrigation works have not been constructed and water has not been made available, the certificate will be withheld pending proof of construction and of the availability of water.

(7) When the application to purchase is approved, and, without regard to whether or not such purchaser shall then be entitled to certificate and patent (which will depend upon the question of construction of irrigation works and the availability of

water), the conflicting entry, or entries, as the case may be, to the extent to which the land was sold for delinquent taxes or assessments, no appeal having been filed, will be canceled of record.

APPENDIX A TO PART 2780

FORM 1

I, ———, the duly elected, qualified, and acting ——— (designation of office) of the ——— irrigation district, duly organized under the laws of the State of ——— as found at page ——— of ———,[1] do hereby certify that the plan of irrigation and survey herewith is submitted under authority of the said district granted by resolution of the board of directors (or trustees) of said district, adopted on the ——— day of ———, 19—, a copy of which said resolution, duly verified by the secretary of said district, is submitted with, and by this reference made a part of, this certificate; and application is hereby made for the designation, under the Act of August 11, 1916 (39 Stat. 506), of the tracts marked hereon "b" or "e"; that the said tracts are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States and that the majority acreage in the said irrigation district is not unentered land.

(Name) ——————————

(Official title) ——————————

Of the ——— Irrigation District.

Attest:

[SEAL]

————————————————————

(Secretary (or other title of recording officer)

FORM 2

STATE OF ———

County of ———, ss:

———, being duly sworn, says that he is the chief engineer of the ——— irrigation district; that the tracts shown hereon to be designated under the Act of August 11, 1916 (39 Stat. 506), are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States;[2] that he has personally examined the same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor, within such limits, any placer, nor cement, gravel, salt spring, or deposit of salt, nor any other valuable mineral deposit (if necessary insert: except mineral deposits within the purview of the Acts of March 3, 1909 (35 Stat. 844), and June 22, 1910 (36 Stat. 583), or of the Act of July 17, 1914 (38 Stat. 509), as the facts may warrant); that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land (exception as above if necessary); that none of the unentered lands contain springs or water holes (see withdrawal of April 17, 1926, also Circular No. 1066, approved May 25, 1926, 51 L.D. 457); that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, as is shown in the accompanying report; that at least one-eighth of each smallest legal subdivision for which designation is sought is susceptible of reclamation from the irrigation system or (where less than one-eighth the irrigable portion of such tract) will be of more value when reclaimed than the entire tract in its native state; that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes; and that the limits of said irrigation district are correctly shown hereon.

————————————————————

Subscribed and sworn to before me this ——— day of ———, 19—.

[SEAL]

(Notary Public) ——————————

My commission expires———.

Group 2800—Use; Rights-of-Way

NOTE: The information collection requirements contained in Parts 2800 2810 and 2880 of Group 2800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004—0102 and 1004-0107. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for right-of-way grants or temporary use permits. The information will be used to make this determination. A response is required to obtain a benefit.

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[1] Give citation to act or acts under which the district is organized.

[2] If the chief engineer has not made a personal examination of the land sufficiently in detail to enable him to make that part of the affidavit bracketed, it should be omitted herefrom and a separate affidavit should be made on the map as to such facts by some person who has made such examination.

[48 FR 40889, Sept. 12, 1983]

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800—Rights-of-Way: General

Sec.
2800.0-1 Purpose.
2800.0-2 Objectives.
2800.0-3 Authority.
2800.0-5 Definitions.
2800.0-7 Scope.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

2801.1 Nature of interest.
2801.1-1 Nature of right-of-way interest.
2801.1-2 Reciprocal grants.
2801.2 Terms and conditions of interest granted.
2801.3 Unauthorized use, occupancy, or development.
2801.4 Right-of-way grants issued on or before October 21, 1976.

Subpart 2802—Applications

802.1 Preapplication activity.
802.2 Application filing activity.
802.2-1 Application filing.
802.2-2 Coordination of applications.
802.3 Application content.
802.4 Application processing.
802.5 Special application procedures.

Subpart 2803—Administration of Rights Granted

803.1 General requirements.
803.1-2 Rental.
803.1-3 Competitive bidding.
803.1-4 Bonding.
803.1-5 Liability.
803.2 Holder activity.
803.3 Immediate temporary suspension of activities.
803.4 Suspension and termination of right-of-way authorizations.
803.4-1 Disposition of improvements upon terminations.
803.5 Change in Federal jurisdiction or disposal of lands.
03.6 Amendments, assignments and renewals.
03.6-1 Amendments.
03.6-2 Amendments to existing railroad grants.
03.6-3 Assignments.

Sec.
2803.6-4 Reimbursement of costs for assignments.
2803.6-5 Renewals of right-of-way grants and temporary use permits.

Subpart 2804—Appeals

2804.1 Appeals procedure.

Subpart 2806—Designation of Right-of-Way Corridors

2806.1 Corridor designation.
2806.2 Designation criteria.
2806.2-1 Procedures for designation.

Subpart 2807—Reservation to Federal Agencies

2807.1 Application filing.
2807.1-1 Document preparation.
2807.1-2 Reservation termination and suspension.

Subpart 2808—Reimbursement of Costs

2808.1 General.
2808.2 Cost recovery categories.
2808.2-1 Application categories.
2808.2-2 Category determination.
2808.3 Fees and payments.
2808.3-1 Application fees.
2808.3-2 Periodic advance payments.
2808.3-3 Costs incurred for a withdrawn or denied application.
2808.3-4 Joint liability for payments.
2808.4 Reimbursement of costs for monitoring.
2808.5 Other cost considerations.
2808.6 Action pending decision on appeal.

AUTHORITY: 43 U.S.C. 1733, 1740, and 1761-1771.

SOURCE: 45 FR 44526, July 1, 1980, unless otherwise noted

Subpart 2800—Rights-of-Way: General

§ 2800.0-1 Purpose.

The purpose of the regulations in this part is to establish procedures for the orderly and timely processing of applications, grants, permits, amendments, assignments and terminations for rights-of-way and permits over, upon, under or through public lands pursuant to title V, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771) and for the administration, assignment, monitoring and termination of right-of-way grants issued on or before October 21, 1976, pursuant to then existing statutory authority.

[45 FR 44526, July 1, 1980, as amended at 51 FR 6543, Feb. 25, 1986]

§ 2800.0–2 Objectives.

It is the objective of the Secretary of the Interior to grant rights-of-way and temporary use permits, covered by the regulations in this part, to any qualified individual, business entity, or governmental entity and to regulate, control and direct the use of said rights-of-way on public land so as to:

(a) Protect the natural resources associated with the public lands and adjacent private or other lands administered by a government agency.

(b) Prevent unnecessary or undue environmental damage to the lands and resources.

(c) Promote the utilization of rights-of-way in common with respect to engineering and technological compatibility, national security and land use plans.

(d) Coordinate, to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals and appropriate quasi-public entities.

§ 2800.0–3 Authority.

Sections 303, 310, and 501-511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733, 1761-1771) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits, easements, and rights-of-way.

[54 FR 25854, June 20, 1989]

§ 2800.0–5 Definitions.

As used in this part, the term:

(a) *Act* means the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701 *et seq.*).

(b) *Secretary* means the Secretary of the Interior.

(c) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(d) *Public lands* means any lands or interest in land owned by the United States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(e) *Applicant* means any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations which applies for a right-of-way grant or a temporary use permit.

(f) *Holder* means any applicant who has received a right-of-way grant or temporary use permit.

(g) *Right-of-way* means the public lands authorized to be used or occupied pursuant to a right-of-way grant.

(h) *Right-of-way grant* means an instrument issued pursuant to title V of the act, or issued on or before October 21, 1976, pursuant to then existing statutory authority, authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

(i) *Temporary use permit* means a revocable non-possessory, non-exclusive privilege, authorizing temporary use of public lands in connection with construction, operation, maintenance, or termination of a project.

(j) *Facilities* means improvements constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant.

(k) *Project* means the transportation or other system for which the right-of-way is authorized.

(l) *Designated right-of-way corridor* means a parcel of land either linear or areal in character that has been identified by law, by Secretarial Order, through the land use planning process or by other management decision as being a preferred location for existing and future right-of-way grants and suitable to accommodate more than 1 type of right-of-way or 1 or more rights-of-way which are similar, identical or compatible; and

(m) *Casual use* means activities that involve practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and, therefore, do not require a right-of-way grant or temporary use permit under this title.

(n) *Transportation and utility corridor* means a parcel of land, without fixed limits or boundaries, that is being used as the location for 1 or more transportation or utility right-of-way.

(o) *Actual costs* means the financial measure of resources expended or used y the Bureau of Land Management n processing a right-of-way application or monitoring the construction, peration and termination of a facility uthorized by a grant or permit. *ctual costs* includes both direct and ndirect costs, exclusive of management overhead.

(p) *Monetary value of the rights and rivileges sought* means the objective alue of the right-of-way or permit or hat the right-of-way grant or temporary use permit is worth in financial rms to the applicant.

(q) *Cost incurred for the benefit of e general public interest* (public benit) means funds expended by the nited States in connection with the ocessing of an application for stud- and data collection determined to ve value or utility to the United ates or the general public separate d apart from application processing.

r) *Public service provided* means ngible improvements, such as roads, ils, recreation facilities, etc., with nificant public value that are ex- cted in connection with the con- uction and operation of the project which a right-of-way grant is ght.

s) *Efficiency to the Government ocessing* means the ability of the ited States to process an applica- n with a minimum of waste, ex- se and effort.

) *Management overhead costs* ans costs associated with the reau directorate, including all State ectors and the entire Washington ice staff, except where a member such staffs is required to perform k on a specific right-of-way or tem- ary use permit case.

) *Trespass* means any use, occu- cy or development of the public ds or their resources without au- rization to do so from the United States where authorization is required, or which exceeds such authorization or which causes unnecessary or undue degradation of the land or resources.

(v) *Willful trespass* means the voluntary or conscious trespass as defined at subpart 2801 of this title. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of mistake or inadvertence. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

(w) *Nonwillful trespass* means a trespass, as defined at § 2801.3(a) of this title, committed by mistake or inadvertence.

(x) *Unnecessary or undue degradation* means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner that takes into consideration the effects of the activity on other resources and land uses, including those resources and uses outside the area of activity. This disturbance may be either nonwillful or willful as described in § 2800.0-5(v) through (w), depending upon the *circumstances*.

(y) *Written demand* means a request in writing for payment and/or rehabilitation in the form of a billing delivered by certified mail, return receipt requested or personally served.

(z) *Road use, amortization and maintenance charges* means the fees charged for commercial use of a road owned or controlled by the Bureau of Land Management. These fees normally include use fees, amortization fees and maintenance fees.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38805, Sept. 2, 1982; 51 FR 6543, Feb. 25, 1986; 52 FR 25808, July 8, 1987; 54 FR 25854, June 20, 1989]

§ 2800.0-7 Scope.

This part sets forth regulations governing:

(a) Issuing, amending or renewing right-of-way grants for necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through public lands, including but not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems for generation, transmission and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935 (16 U.S.C. 791);

(5) Systems for transmission or reception of radio, television, telephone, telegraph and other electronic signals, and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through such lands; or

(8) Rights-of-way to any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom.

(b) Temporary use of additional public lands for such purposes as the Secretary determines to be reasonably necessary for construction, operation, maintenance or termination of rights-of-way, or for access to the project or a portion of the project.

(c) However, the regulations contained in this part do not cover right-of-way grants for: Federal Aid Highways, roads constructed or used pursuant to cost share or reciprocal road use agreements, wilderness areas, and oil, gas and petroleum products pipelines except as provided for in § 2800.0-7(a)(8) of this title.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

§ 2801.1 Nature of interest.

§ 2801.1-1 Nature of right-of-way interest.

(a) All rights in public lands subject to a right-of-way grant or temporary use permit not expressly granted are retained and may be exercised by the United States. These rights include, but are not limited to:

(1) A continuing right of access onto the public lands covered by the right-of-way grant or temporary use permit, and upon reasonable notice to the holder, access and entry to any facility constructed on the right-of-way or permit area;

(2) The right to require common use of the right-of-way, and the right to authorize use of the right-of-way for compatible uses (including the subsurface and air space).

(b) A right-of-way grant or temporary use permit may be used only for the purposes specified in the authorization. The holder may allow others to use the land as his/her agent in exercising the rights granted.

(c) All right-of-way grants and temporary use permits shall be issued subject to valid existing rights.

(d) A right-of-way grant or temporary use permit shall not give or authorize the holder to take from the public lands any mineral or vegetative material, including timber, without se-

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curing authorization under the Materials Act (30 U.S.C. 601 *et seq.*), and paying in advance the fair market value of the material cut, removed, used, or destroyed. However, common varieties of stone and soil necessarily removed in the construction of a project may be used elsewhere along the same right-of-way or permit area in the construction of the project without additional authorization and payment. The holder shall be allowed in the performance of normal maintenance to do minor trimming, pruning and clearing of vegetative material within the right-of-way or permit area and around facilities constructed thereon without additional authorization and payments. At his discretion and when it is in the public interest, the authorized officer may in lieu of requiring an advance payment for any mineral or vegetative materials, including timber, cut or excavated, require the holder to stockpile or stack the material as designated locations for later disposal by the United States.

(e) A holder of a right-of-way grant or temporary use permit may assign a grant or permit to another, provided the holder obtains the written approval of the authorized officer.

(f) The holder of a right-of-way grant may authorize other parties to use a facility constructed, except for roads, on the right-of-way with the prior written consent of the authorized officer and charge for such use. In any such arrangement, the holder shall continue to be responsible for compliance with all conditions of the grant. This paragraph does not limit in any way the authority of the authorized officer to issue additional right-of-way grants or temporary use permits for compatible uses on or adjacent to the right-of-way, nor does it authorize the holder to impose charges for the use of lands made subject to such additional right-of-way grants or temporary use permits.

(g) Each right-of-way grant or temporary use permit shall describe the public lands to be used or occupied and the grant or permit shall be limited to those lands which the authorized officer determines:

(1) Will be occupied by the facilities authorized;

(2) To be necessary for the construction, operation, maintenance, and termination of the authorized facilities;

(3) To be necessary to protect the public health and safety; and

(4) Will do no unnecessary damage to the environment.

(h) Each grant or permit shall specify its term. The term of the grant shall be limited to a reasonable period. A reasonable period for a right-of-way grant may range from a month to a year or a term of years to perpetuity. The term for a temporary use shall not exceed 3 years. In determining the period for any specific grant or permit, the authorized officer shall provide for a term necessary to accomplish the purpose of the authorization. Factors to be considered by the authorized officer for the purpose of establishing an equitable term pertaining to the use include, but are not limited to:

(1) Public purpose served;

(2) Cost and useful life of the facility; and

(3) Time limitations imposed by required licenses or permits that the holder is required to secure from other Federal or State agencies.

(i) Each grant issued for a term of 20 years or more shall contain a provision requiring periodic review of the grant at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.

(j) Each grant shall have a provision stating whether it is renewable or not and if renewable, the terms and conditions applicable to the renewal.

(k) Each grant shall not only comply with the regulations of this part, but also, comply with the provisions of any other applicable law and implementing regulations as appropriate.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38805, Sept. 2, 1982]

§ 2801.1-2 Reciprocal grants.

When the authorized officer determines from an analysis of land use plans or other management decisions that a right-of-way for an access road is or shall be needed by the United States across lands directly or indirectly owned or controlled by an applicant for a right-of-way grant, he or she shall, if it is determined to be in the public interest, require the applicant, as a condition to receiving a right-of-way grant, to grant the United States an equivalent right-of-way that is adequate in duration and rights.

§ 2801.2 Terms and conditions of interest granted.

(a) An applicant by accepting a right-of-way grant, temporary use permit, assignment, amendment or renewal agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the authorized use and such additional State and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit.

(2) That in the construction, operation, maintenance and termination of the authorized use, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision.

(3) To rebuild and repair roads, fences, and established trails that may be destroyed or damaged by construction, operation or maintenance of the project and to build and maintain suitable crossings for existing roads and significant trails that intersect the project.

(4) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or in the immediate vicinity of the right-of-way or permit area. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, amended or assigned under these regulations shall contain such terms, conditions, and stipulations as may be required by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:

(1) Requirements for restoration, revegetation and curtailment of erosion of the surface of the land, or any other rehabilitation measure determined necessary;

(2) Requirements to ensure that activities in connection with the grant or permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal or State law;

(3) Requirements designed to control or prevent damage to scenic, esthetic, cultural and environmental values (including damage to fish and wildlife habitat), damage to Federal property and hazards to public health and safety;

(4) Requirements to protect the interests of individuals living in the general area who rely on the fish, wildlife and biotic resources of the area for subsistence purposes;

(5) Requirements to ensure that the facilities to be constructed, used and operated on the prescribed location are maintained and operated in a manner consistent with the grant or permit; and

(6) Requirements for compliance with State standards for public health and safety, environmental protection and siting, construction, operation and maintenance when those standards are more stringent than Federal standards.

§ 2801.3 Unauthorized use, occupancy, or development.

(a) Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of that part and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0-5.

(b) Anyone determined by the authorized officer to be in violation of paragraph (a) of this section shall be notified in writing of such trespass and shall be liable to the United States for:

(1) Reimbursement of all costs incurred by the United States in the investigation and termination of such trespass;

(2) The rental value of the lands, as provided for in § 2803.1-2 of this title, for the current year and past years of trespass, or where applicable, the cumulative value of the current use fee, amortization fee, and maintenance fee as determined by the authorized officer for unauthorized use of any road administered by the BLM; and

(3) Rehabilitating and stabilizing any lands that were harmed by such trespass. If the trespasser does not rehabilitate and stabilize the lands within the time set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(c) In addition to amounts due under the provisions of paragraph (b) of this section, the following penalties shall be assessed by the authorized officer:

(1) For all nonwillful trespass which is not resolved by meeting one of the conditions identified in § 9239.7-1 within 30 days of receipt of a written demand under paragraph (b) of this section—an amount equal to the rental value and for roads, an amount equal to the charges for road use, amortization and maintenance which have accrued since the inception of the trespass;

(2) For repeated nonwillful or willful trespass—an amount that is 2 times the rental value and for roads, an amount 2 times the charges for road use, amortization and maintenance which have accrued since the inception of the trespass.

(d) In no event shall settlement for trespass computed pursuant to paragraphs (b) and (c) of this section be less than the processing fee for a Category I application for provided for in § 2808.3-1 of this title for nonwillful trespass or less than 3 times this value for repeated nonwillful or knowing and willfull trespass. In all cases the trespasser shall pay whichever is the higher of the computed penalty or minimum penalty amount.

(e) Failure to satisfy the requirements of § 2801.3(b) of this title shall result in the denial of any right-of-way, temporary land use, road use application or other lands use request filed by not yet granted until there has been compliance with the provisions of § 9239.7-1 of this title.

(f) Any person adversely affected by a decision of the authorized officer issued under this section may appeal that decision under the provisions of part 4 of this title.

(g) In addition to the civil penalties provided for in this part, any person who knowingly and willfully violates the provisions of § 2801.3(a) of this title may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, as provided by section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and § 9262.1 of this title.

[54 FR 25854, June 20, 1989]

§ 2801.4 Right-of-way grants issued on or before October 21, 1976.

A right-of-way grant issued on or before October 21, 1976, pursuant to then existing statutory authority is covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the grant or the statute under which it was issued, in which event the provisions of the grant or the then existing statute shall apply.

[51 FR 6543, Feb. 25, 1986]

Subpart 2802—Applications

§ 2802.1 Preapplication activity.

(a) Anyone interested in obtaining a right-of-way grant or temporary use permit involving use of public lands is encouraged to establish early contact with the Bureau of Land Management office responsible for management of the affected public lands so that potential constraints may be identified, the proposal may be considered in land use plans, and processing of an application may be tentatively scheduled. The appropriate officer shall furnish the proponent with guidance and information about:

(1) Possible land use conflicts as identified by review of land use plans, land ownership records and other available information sources;

(2) Application procedures and probable time requirements;

(3) Applicant qualifications;

(4) Cost reimbursement requirements;

(5) Associated clearances, permits and licenses which may be required in addition to, but not in place of the grants or permits required under these regulations;

(6) Environmental and management considerations;

(7) Any other special conditions that can be identified;

(8) Identification of on-the-ground investigations which may be required in order to complete the application; and

(9) Coordination with Federal, State and local government agencies.

(b) Any information furnished by the proponent in connection with a preapplication activity or use which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) No right-of-way applications processing work, other than that incurred in the processing of applications for permits for temporary use of public lands in furtherance of the filing of an application and pre-application guidance under paragraph (a) of this section, shall be undertaken by the authorized officer prior to the filing of an application together with advance payment as required by subpart 2808 of this title. Such processing work includes, but is not limited to, special studies such as environmental analyses, environmental statements, engineering surveys, resource inventories and detailed land use or record analyses.

(d) The prospective applicant is authorized to go upon the public lands to perform casual acts related to data collection necessary for the filing of an acceptable application. If, however, the authorized officer determines that appreciable surface or vegetative disturbance will occur or is a real possibility he shall issue a temporary use permit with appropriate terms, conditions, and special stipulations pursuant to § 2801.2 of this title.

(e) When, during pre-application discussions with the prospective applicant, the authorized officer supplies the prospective applicant with information set out in paragraph (a) of this section, the authorized officer shall also inform appropriate Federal, State and local government agencies that preapplication discussions have begun in order to assure that effective coordination between the prospective applicant and all responsible government agencies is initiated as soon as possible.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38805, Sept. 2, 1982; 52 FR 25808, July 8, 1987]

§ 2802.2 Application filing activity.

§ 2802.2-1 Application filing.

Applications for a right-of-way grant or temporary use permit shall be filed with either the Area Manager, the District Manager or the State Director having jurisdiction over the affected public lands except:

(a) Applications for Federal Aid Highways shall be filed pursuant to 23 U.S.C. 107, 317, as set out in 43 CFR 2821;

(b) Applications for cost-share roads shall be filed pursuant to 43 CFR 2812;

(c) Applications for oil and gas pipelines shall be filed pursuant to 43 CFR 2880; and

(d) Applications for projects on lands under the jurisdiction of 2 or more administrative units of the Bureau of Land Management may be filed at any of the Bureau of Land Management offices having jurisdiction over part of the project, and the applicant shall be notified where subsequent communications shall be directed.

§ 2802.2-2 Coordination of applications.

Applicants filing with any other Federal department or agency for a license, certificate of public convenience and necessity or any other authorization for a project involving a right-of way on public lands, shall simultaneously file an application under this part with the Bureau of Land Management for a right-of-way grant. To minimize duplication, pertinent information from the application to such department or agency may be appended or referenced in the application for the right-of-way grant.

§ 2802.3 Application content.

(a) Applications for right-of-way grants or temporary use permits shall be filed on a form approved by the Director. The application form shall contain instructions for the completion of the form and shall require the following information:

(1) The name and address of the applicant and the applicant's authorized agent, if appropriate;

(2) A description of the applicant's proposal;

(3) A map, USGS quadrangle, aerial photo or equivalent, showing the approximate location of the proposed right-of-way and facilities on public lands and existing improvements adjacent to the proposal, shall be attached to the application. Only the existing adjacent improvements which the proposal may directly affect need be shown on the map;

(4) A statement of the applicant's technical and financial capability to construct, operate, maintain and terminate the proposal;

(5) Certification by the applicant that he/she is of legal age, authorized to do business in the State and that the information submitted is correct to the best of the applicant's knowledge.

(b) The applicant may submit additional information to assist the authorized officer in processing the application. Such information may include, but is not limited to, the following:

(1) Federal or State approvals required for the proposal;

(2) A description of the alternative route(s) and mode(s) considered by the applicant when developing the proposal;

(3) Copies of or reference to similiar applications or grants the applicant has submitted or holds;

(4) A statement of need and economic feasibility or the proposal;

(5) A statement of the environmental, social and economic effects of the proposal.

[47 FR 12569, Mar. 23, 1982]

§ 2802.4 Application processing.

(a) The authorized officer shall acknowledge, in writing, receipt of the application and initial cost reimbursement payment required by subpart 2808 of this title. An application may be denied if the authorized officer determines that:

(1) The proposed right-of-way or permit would be inconsistent with the purpose for which the public lands are managed;

(2) That the proposed right-of-way or permit would not be in the public interest;

(3) The applicant is not qualified;

(4) The right-of-way or permit would otherwise be inconsistent with the act or other applicable laws; or

(5) The applicant does not or cannot demonstrate that he/she has the technical or financial capacity.

(b) Upon receipt of the acknowledgement, the applicant may continue his or her occupancy of the public land pursuant to § 2802.1(d) of this title to continue to gather data necessary to perfect the application. However, if the applicant finds or the authorized officer determines that surface disturbing activities will occur in gathering the necessary data to perfect the application, the applicant shall file an application for a temporary use permit prior to entering into such activities on the public land.

(c) The authorized officer may require the applicant for a right-of-way grant to submit such additional information as he deems necessary for review of the application. All requests for additional information shall be in writing. Where the authorized officer determines that the information supplied by the applicant is incomplete or does not conform to the act or these regulations, the authorized officer shall notify the applicant of these deficiencies and afford the applicant an opportunity to file a correction. Where a deficiency notice has not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiency and afford the applicant an opportunity to file a correction.

(d) Prior to issuing a right-of-way grant or temporary use permit, the authorized officer shall:

(1) Complete an environmental analysis in accordance with the National Environmental Policy Act of 1969;

(2) Determine compliance of the applicant's proposed plans with applicable Federal and State laws;

(3) Consult with all other Federal, State, and local agencies having an interest, as appropriate; and

(4) Take any other action necessary to fully evaluate and make a decision to approve or deny the application and prescribe suitable terms and conditions for the grant or permit.

(e) The authorized officer may hold public meetings on an application for a right-of-way grant or temporary use permit if he determines that such meetings are appropriate and that sufficient public interest exists to warrant the time and expense of such meetings. Notice of public meetings shall be published in the FEDERAL REGISTER or in local newspapers or in both.

(f) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions, including changes in route or site location on public lands, as the authorized officer determines to be appropriate.

(g) No right-of-way grant or temporary use permit shall be in effect until the applicant has accepted, in writing, the terms and conditions of the grant or permit. Written acceptance shall constitute an agreement between the applicant and the United States that, in consideration of the right to use public lands, the applicant shall comply with all terms and conditions contained in the authorization and the provisions of applicable laws and regulations.

(h) The authorized officer may include in his/her decision to issue a grant a provision that shall be included in a right-of-way grant requiring that no construction on or use of the right-of-way shall occur until a detailed construction, operation, rehabilitation and environmental protection plan has been submitted to and approved by the authorized officer. This requirement may be imposed for all or any part of the right-of-way.

[45 FR 44526, July 1, 1980, as amended at 47 FR 12570, Mar. 23, 1982; 52 FR 25808, July 8, 1987]

§ 2802.5 Special application procedures.

(a) An applicant filing for a right-of-way within 4 years from the effective date of this subpart for an unauthorized right-of-way that existed on public land prior to October 21, 1976, is not:

(1) Required to reimburse the United States for the processing, monitoring or other costs provided for in subpart 2808 of this title.

(2) Required to pay rental fees for the period of unauthorized land use.

(b) In order to facilitate management of the public lands, any person or State or local government which has constructed public highways under the authority of R. S. 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer. Maps filed under this paragraph shall be in sufficient detail to show the location of the R. S. 2477 highway(s) on public lands in relation to State or county highway(s) or road(s) in the vicinity. The submission of such maps showing the location of R. S. 2477 highway(s) on public lands shall not be conclusive evidence as to their existence. Similiarly, a failure to show the location of R. S. 2477 highway(s) on any map shall not preclude a later finding as to their existence.

[45 FR 44526, July 1, 1980, as amended at 47 FR 12570, Mar. 23, 1982; 47 FR 38806, Sept. 2, 1982; 52 FR 25808, July 8, 1987]

Subpart 2803—Administration of Rights Granted

§ 2803.1 General requirements.

§ 2803.1-2 Rental.

(a) The holder of a right-of-way grant or temporary use permit shall pay annually, in advance, except as provided in paragraph (b) of this section, the fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices. Annual rent billing periods shall be set or adjusted to coincide with the calendar year (January 1 through December 31) by proration on the basis of 12 months; the initial month shall not be counted for right-of-way grants or temporary use permits having an anniversary date of the 15th or later in the month and the terminal month shall not be counted if the termination date is the 14th or earlier in the month. Rental shall be determined in accordance with the provisions of paragraph (c) of this section; *Provided, however*, That in those instances where the annual payment is $100 or less, the authorized officer may require an advance lump sum payment for 5 years.

(b)(1) No rental shall be collected where:

(i) The holder is a Federal, State or local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principal source of revenue is customer charges;

(ii) The right-of-way was issued pursuant to a statute that did not or does not require the payment of rental; or

(iii) The facilities constructed on a site or linear right-of-way are or were financed in whole or in part under the Rural Electrification Act of 1936, as amended, or are extensions from such Rural Electrification Act financed facilities.

(2) The authorized officer may reduce or waive the rental payment under the following instances:

(i) The holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise;

(ii) The holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary;

(iii) The holder holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under part 2880 of this title; and:

(A) Needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; or

(B) Needs a right-of-way across the public lands outside the permit, lease, license or contract area in order to reach said area;

(iv) With the concurrence of the State Director, the authorized officer, after consultation with an applicant/holder, determines that the requirement to pay the full rental will cause undue hardship on the holder/applicant and that it is in the public interest to reduce or waive said rental. In order to complete such consultation, the State Director may require the applicant/holder to submit data, information and other written material in support of a proposed finding that the right-of-way grant or temporary use permit qualifies for a reduction or waiver of rental; and

(v) A right-of-way involves a cost share road or reciprocal right-of-way agreement not subject to part 2812 of this title. Any fair market value rental required to be paid under this paragraph (b)(2)(v) shall be determined by the proportion of use.

(c)(1)(i) Except for those linear right-of-way grants or temporary use permits that the authorized officer determines under paragraph (c)(1)(v) of this section to require an individual appraisal, an applicant shall, prior to the issuance of a linear right-of-way grant or temporary use permit, submit an annual rental payment in advance for such right-of-way grant or temporary use permit in accordance with the following schedule:

PER ACRE RENTAL FEE ZONE VALUE

Zone value	Oil and gas and other energy related pipelines, roads, ditches and canals	Electric transmission lines, telephone electric distribution, non-energy related pipelines, and other linear rights-of-way
$50	$2.56	$2.24
100	5.13	4.49
200	10.26	8.97
300	15.38	13.46
400	20.51	17.95
500	25.64	22.44
600	30.77	26.92
1,000	51.28	44.87

(The values are based on zone value × impact adjustment × interest rate (6.41—1-year Treasury Securities "Constant Maturity" rate for June 30, 1986. The rate will remain constant except as provided in paragraphs (c)(1)(ii) and (iii) of this section.)

A per acre rental schedule by State, County, and type of linear right-of-way use, which will be updated annually, is available from any Bureau State or District office or may be obtained by writing: Director (330), Bureau of Land Management, Room 3660, Main Interior Bldg., 1800 C Street NW., Washington, DC 20240.

(ii) The schedule will be adjusted annually by multiplying the current year's rental per acre by the annual change, second quarter to the second quarter (June 30 to June 30), in the Gross National Product Implicit Price Deflator Index as published in the *Survey of Current Business* of the Department of Commerce, Bureau of Economic Analysis.

(iii) At such times as the cumulative change in the index used in paragraph (c)(1)(ii) of this section exceeds 30 percent or the change in the 3-year average of the 1-year interest rate exceeds plus or minus 50 percent, the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures. Measurements shall be taken at the end of the second quarter (June 30) of the year beginning with calendar year 1986. The initial bases (June 30, 1986) for these two indexes are: Gross National Product Price Implicit Price Deflator Index was 114.0 and the 3-year average of the 1-year Treasury interest rate was 8.86%.

(iv) Rental for the ensuing calendar year for any single right-of-way grant or temporary use permit shall be the rental per acre from the current schedule times the number of acres embraced in the grant or permit, rounded to the nearest whole dollar, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

(v) The authorized officer shall use the fee schedule unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10, and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal.

Once the rental for a right-of-way grant has been determined by use of the rental schedule, the provisions of this subparagraph shall not be used as a basis for removing it from the schedule.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder. The notice shall provide the reasons for making the right-of-way subject to the schedule.

(ii) Where the new annual rental exceeds $100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3-year period.

(3)(i) The rental for linear right-of-way grants and temporary use permits not covered by the schedule set out above in this paragraph, including those determined by the authorized officer to require an individual appraisal under paragraph (c)(1)(v) of this section, and for non-linear right-of-way grants and temporary use permits (e.g., communication sites, reservoir sites, plant sites and storage sites) shall be determined by the authorized officer and paid annually in advance.

Said rental shall be based on either a market survey of comparable rentals, or on a value determination for specific parcels or groups of parcels unless such rental is reduced or waived as provided in paragraph (b) of this section. All such rental determinations shall be prepared to the standards and format described in the Uniform Appraisal Standards for Federal Land Acquisition (Department of Justice publication) and/or in certain cases as required by the Bureau's Appraisal manual (9300). Where the authorized officer determines that a competitive interest exists for site type right-of-way grants such as wind farms, communication sites, etc., rental may be determined through competitive bidding procedures set out in § 2803.1-3 of this title.

(ii) To expedite the processing of any grant or permit covered by paragraph (c)(3) of this section, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of a rental value determination, the advance deposit shall be adjusted according to the final fair market rental value determination.

(4) Decisions on rental determinations are subject to appeal under subpart 2804 of this title.

(5) Upon the holder's written request, rentals may be prepaid for 5 years in advance.

(d) If the rental required by this section is not paid when due, and such default for nonpayment continues for 30 days after notice, action may be taken o terminate the right-of-way grant or emporary use permit. After default as occurred, no structures, buildings r other equipment may be removed rom the subservient lands except pon written permission from the au-horized officer.

2 FR 25818, July 8, 1987; 52 FR 36576, pt. 30, 1987]

803.1-3 Competitive bidding.

(a) The authorized officer may iden-y and offer public lands for competi-e right-of-way use either on his/her n motion or as a result of nomina-n by the public. Competitive bid-g shall be used only for site-type ht-of-way grants such as wind farms and communication sites. The authorized officer shall give public notice of such decision through publication of a notice of realty action as provided in paragraph (c)(1) of this section. The decision to offer public lands for competitive right-of-way use shall conform to the requirements of the Bureau's land use planning process. The authorized officer shall not offer public lands for competitive right-of-way use where equities such as prior or related use of said lands warrant issuance of a noncompetitive right-of-way grant(s).

(b) A right-of-way grant issued pursuant to a competitive offer shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder or anyone authorized to sign for the bidder that he/she is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(c) The offering of public lands for right-of-way use under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A notice of realty action indicating the availability of public lands for competitive right-of-way offering shall be published in the FEDERAL REGISTER and at least once a week for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized officer may determine. The successful qualified bidder shall, prior to the issuance of the right-of-way grant, pay his/her proportionate share of the total cost of publication.

(ii) The notice of realty action shall include the use proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the grant(s), rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the notice of realty action, but no bids shall be accepted or rejected at that time. The right to reject any and all bids is reserved. Only those bids received by the close of business on the day prior to the bid opening or at such other time stated in the notice of realty action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft or cashier's check payable in U.S. currency and made payable to the Department of the Interior—Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice of realty action. If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing unless another method is specified in the notice of realty action. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the grant form(s) shall be forwarded to the qualifying bidder for signing. The signed grant form(s) with the payment of the balance of the first year's rental and the publication costs shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the right-of-way grant(s).

(6) If the successful qualified bidder fails to execute the grant form(s) and pay the balance of the rental payment and the costs of publication within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited.

[52 FR 25820, July 8, 1987]

§ 2803.1-4 Bonding.

The authorized officer may require the holder of a right-of-way grant or temporary use permit to furnish a bond or other security satisfactory to him, to secure the obligations imposed by the grant or permit and applicable laws and regulations.

[45 FR 44526, July 1, 1980. Redesignated at 52 FR 25820, July 8, 1987]

§ 2803.1-5 Liability.

(a) Except as provided in paragraph (f) of this section, each holder shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area by the holder.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity or facility within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standards shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war, an Act of God or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed $1,000,000 for any one event and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the holder's use and occupancy of rights-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damages or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by the holder.

(h) Except as otherwise expressly provided in this section, the provision in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, each shall be jointly and severally liable under this section.

[45 FR 44526, July 1, 1980. Redesignated at 52 FR 25820, July 8, 1987]

§ 2803.2 Holder activity.

(a) If a notice to proceed requirement has been included in the grant or permit, the holder shall not initiate construction, occupancy or use until the authorized officer issues a notice to proceed.

(b) Any substantial deviation in location or authorized use by the holder during construction, operation or maintenance shall be made only with prior approval of the authorized officer under § 2803.6-1 of this title for the purposes of this paragraph, substantial deviation means:

(1) With respect to location, the holder has constructed the authorized facility outside the prescribed boundaries of the right-of-way authorized by the instant grant or permit.

(2) With respect to use, the holder has changed or modified the authorized use by adding equipment, overhead or underground lines, pipelines, structures or other facilities not authorized in the instant grant or permit.

(c) The holder shall notify the authorized officer of any change in status subsequent to the application or issuance of the right-of-way grant or temporary use permit. Such changes include, but are not limited to, legal mailing address, financial condition, business or corporate status. When requested by the authorized officer, the holder shall update and/or attest to the accuracy of any information previously submitted.

(d) If required by the terms of the right-of-way grant or temporary use permit, the holder shall, subsequent to construction and prior to commencing operations, submit to the authorized officer a certification of construction, verifying that the facility has been constructed and tested in accordance with terms of the right-of-way grant or temporary use permit, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2803.3 Immediate temporary suspension of activities.

(a) If the authorized officer determines that an immediate temporary suspension of activities within a right-of-way or permit area for violation of the terms and conditions of the right-of-way authorization is necessary to protect public health or safety or the environment, he/she may promptly abate such activities prior to an administrative proceeding.

(b) The authorized officer may give an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of the holder, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm an oral order by a written notice to the holder addressed to the holder or the holder's designated agent.

(c) An order of immediate temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(d) Any time after an order of immediate temporary suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(e) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if a final order denying the request had been issued by the authorized officer.

§ 2803.4 Suspension and termination of right-of-way authorizations.

(a) If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition, event, or time, the right-of-way authorization shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit. The authorized officer may terminate a right-of-way grant or temporary use permit when the holder requests or consents to its termination in writing.

(b) The authorized officer may suspend or terminate a right-of-way grant or temporary use permit if he determines that the holder has failed to comply with applicable laws or regulations, or any terms, conditions or stipulations of the right-of-way grant or temporary use permit or has abandoned the right-of-way.

(c) Failure of the holder of a right-of-way grant to use the right-of-way for the purpose for which the authorization was issued for any continuous five-year period shall constitute a presumption of abandonment. The holder may rebut the presumption by proving that his failure to use the right-of-way was due to circumstances not within the holder's control.

(d) Before suspending or terminating a right-of-way grant pursuant to paragraph (b) of this section, the authorized officer shall give the holder written notice that such action is contemplated and the grounds therefor and shall allow the holder a reasonable opportunity to cure such noncompliance.

(e) In the case of a right-of-way grant that is under its terms an easement, the authorized officer shall give written notice to the holder of the suspension or termination and shall refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR part 4. If the Administrative Law Judge determines that grounds for suspension or termination exist and such action is justified, the authorized officer shall suspend or terminate the right-of-way grant.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38806, Sept. 2, 1982]

§ 2803.4-1 Disposition of improvements upon terminations.

Within a reasonable time after termination, revocation or cancellation of a right-of-way grant, the holder shall, unless directed otherwise in writing by the authorized officer, remove such structures and improvements and shall restore the site to a condition satisfactory to the authorized officer. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by

authorized officer, they shall
ne the property of the United
s, but the holder shall remain
e for the cost of removal of the
tures and improvements and for
ration of the site.

**.5 Change in Federal jurisdiction or
isposal of lands.**

Where a right-of-way grant or
orary use permit administered
r these regulations traverses
ic lands that are transferred to
her Federal agency, administra-
of the right-of-way shall, at the
retion of the authorized officer, be
gned to the acquiring agency
ss such assignment would dimin-
he rights of the holder.

) Where a right-of-way grant or
porary use permit traverses public
s that are transferred out of Fed-
ownership, the transfer of the
shall, at the discretion of the au-
rized officer, include an assignment
he right-of-way, be made subject to
right-of-way, or the United States
reserve unto itself the land en-
bered by the right-of-way.

**03.6 Amendments, assignments and re-
newals.**

03.6-1 Amendments.

) Any substantial deviation in loca-
or use as set forth in § 2803.2(b)
this title shall require the holder of
rant or permit to file an amended
lication. The requirements for the
ended application and the filing are
same and shall be accomplished in
manner as set forth in subpart
02 of this title.

b) Holders of right-of-way grants
ued before October 21, 1976, who
d it necessary to amend their grants
all comply with paragraph (a) of
s section in filing their applications.
on acceptance of the amended ap-
cation by the authorized officer an
ended right-of-way grant shall be
ued. To the fullest extent possible,
when in the public interest as de-
mined from current land use plans
other management decisions, the
ended grant shall contain the same
ms and conditions set forth in the
ginal grant with respect to annual
t, duration and nature of interest.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38806, Sept. 2, 1982]

§ 2803.6-2 Amendments to existing railroad grants.

(a) An amended application required under § 2803.6-1(a) or (b), as appropriate, shall be filed with the authorized officer for any realignment of a railroad and appurtenant communication facilities which are required to be relocated due to the realignment. Upon acceptance of the amended application by the authorized officer, an amended right-of-way grant shall be issued within 6 months of date of acceptance of the application. The date of acceptance of the application for the purpose of this paragraph shall be determined in accordance with § 2802.4(a) of this title.

(b) Notwithstanding the regulations of this part, the authorized officer may include in the amended grant the same terms and conditions of the original grant with respect to the payment of annual rental, duration, and nature of interest if he/she finds them to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value.

§ 2803.6-3 Assignments.

Any proposed assignment in whole or in part of any right or interest in a right-of-way grant or temporary use permit acquired pursuant to the regulations of this part shall be filed in accordance with §§ 2802.1-1 and 2802.3 of this title. The application for assignment shall be accompanied by the same showing of qualifications of the assignee as if the assignee were filing an application for a right-of-way grant or temporary use permit under the regulations of this part. In addition, the assignment shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned. No assignment shall be recognized unless and until it is approved in writing by the authorized officer. The authorized officer may, at the time of approval of the assignment, modify or add bonding requirements.

[45 FR 44526, July 1, 1980, as amended at 52 FR 25820, July 8, 1987]

§ 2803.6-4 Reimbursement of costs for assignments.

(a) All filings for assignments, except as provided in paragraph (b) of this section, made pursuant to this section shall be accompanied by a nonrefundable payment of $50 from the assignor. Exceptions for a nonrefundable payment for an assignment are the same as in § 2803.1 of this title.

(b) Where a holder assigns more than 1 right-of-way grant as a single action, the authorized officer may, due to economies of scale, set a nonrefundable fee of less than $50 per assignment.

[52 FR 25820, July 8, 1987]

§ 2803.6-5 Renewals of right-of-way grants and temporary use permits.

(a) When a grant provides that it may be renewed, the authorized officer shall renew the grant so long as the project or facility is still being used for purposes authorized in the original grant and is being operated and maintained in accordance with all the provisions of the grant and pursuant to the regulations of this title.

(b) When a grant does not contain a provision for renewal, the authorized officer, upon request from the holder and prior to the expiration of the grant, may renew the grant at his discretion. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

(c) Temporary use permits issued pursuant to the regulations of this part may be renewed at the discretion of the authorized officer. The holder of a permit desiring a renewal shall notify the authorized officer in writing of the need for renewal prior to its expiration date. Upon receipt of the notice, the authorized officer shall either renew the permit or reject the request.

(d) Renewals of grants and permits pursuant to paragraphs (a), (b) and (c) of this section are not subject to subpart 2808 of this title.

(e) Denial of any request for renewal by the authorized officer under paragraphs (b) and (c) of this section shall be final with no right of review or appeal.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38806, Sept. 2, 1982; 52 FR 25808, July 8, 1987]

Subpart 2804—Appeals

§ 2804.1 Appeals procedure.

(a) All appeals under this part shall be taken under 43 CFR part 4 from any final decision of the authorized officer to the Office of the Secretary, Board of Land Appeals.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for the stay of a decision shall be filed with the Office of Hearings and Appeals, Department of the Interior.

[45 FR 44526, July 1, 1980, as amended at 53 FR 17702, May 18, 1988]

Subpart 2806—Designation of Right-of-Way Corridors

§ 2806.1 Corridor designation.

(a) The authorized officer may, based upon his/her motion or receipt of an application, designate right-of-way corridors across any public lands in order to minimize adverse environmental impacts and the proliferatio of separate rights-of-way. The designation of corridors shall not preclude th granting of separate rights-of-wa over, upon, under or through th public lands where the authorized off cer determines that confinement to corridor is not appropriate.

(b) Any existing transportation an utility corridor that is capable of a commodating an additional compatib right-of-way may be designated as right-of-way corridor by the autho ized officer without further review required in § 2806.2 of this title. Sub quent right-of-way grants shall, to t extent practical and as determined the authorized officer, be confined designated corridors, however, the d ignation of a right-of-way corridor not a commitment by the authoriz officer to issue right-of-way gra within the corridor. All applicati for right-of-way grants, includ those within designated corridors, are subject to the procedure for approval set forth in subpart 2802 of this title.

[45 FR 44526, July 1, 1980, as amended at 47 FR 3806, Sept. 2, 1982]

§ 2806.2 Designation criteria.

The locations and boundary of designated right-of-way corridors shall be determined by the authorized officer after a thorough review of:

(a) Federal, State and local land-use plans and applicable Federal and State laws.

(b) Environmental impacts on natural resources including soil, air, water, fish, wildlife, vegetation and on cultural resources.

(c) Physical effects and constraints on corridor placement or rights-of-way placed therein due to geology, hydrology, meteorology, soil or land forms.

(d) Economic efficiency of placing a right-of-way within a corridor, taking into consideration costs of construction, operation and maintenance, and costs of modifying or relocating existing facilities in a proposed corridor.

(e) National security risks.

(f) Potential health and safety hazards to the public lands users and the general public due to materials or activities within the right-of-way corridor.

(g) Engineering and technological compatibility of proposed and existing facilities.

(h) Social and economic impacts of the facilities on public lands users, adjacent landowners and other groups or individuals.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38806, Sept. 2, 1982]

§ 2806.2-1 Procedures for designation.

(a) The designation of a right-of-way corridor shall be by decision of the authorized officer. A land use plan or plan amendment which contains the designation of a right-of-way corridor(s) meets the notification requirements of this section; and

(b) The authorized officer shall take appropriate measures to inform the public of designated corridors, so that existing and potential right-of-way applicants, governmental agencies and the general public will be aware of such corridor locations and any restrictions applicable thereto. Public notice of such designations may be given through publication in local newspapers or through distribution of planning documents, environmental impact statements or other appropriate documents.

[45 FR 44526, July 1, 1980, as amended at 47 FR 38806, Sept. 2, 1982]

Subpart 2807—Reservation to Federal Agencies

§ 2807.1 Application filing.

A Federal agency desiring a right-of-way or temporary use permit over, upon, under or through the public lands pursuant to this part, shall apply to the authorized officer and comply with the provisions of subpart 2802 of this title to the extent that the requirements of subpart 2802 of this title are appropriate for Federal agencies.

§ 2807.1-1 Document preparation.

(a) The right-of-way reservation need not conform to the agency's proposal, but may contain such modifications, terms, conditions or stipulations, including changes in route or site location, as the authorized officer determines appropriate.

(b) All provisions of the regulations contained in this part shall, to the extent possible, apply and be incorporated into the reservation to the Federal agency.

§ 2807.1-2 Reservation termination and suspension.

The authorized officer may suspend or terminate the reservation only in accordance with the terms and conditions of the reservation, or with the consent of the head of the department or agency holding the reservation.

Subpart 2808—Reimbursement of Costs

Source: 52 FR 25808, July 8, 1987, unless otherwise noted.

§ 2808.1 General.

(a) An applicant for a right-of-way grant or temporary use permit under this part shall reimburse the United States in advance for the expected reasonable administrative and other costs incurred by the United States in processing the application, including the preparation of any reports or statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), prior to the United States having incurred such costs.

(b) The regulations in this subpart do not apply to the following:

(1) Federal agencies;

(2) State and local governments or agencies or instrumentalities thereof when a right-of-way grant or temporary use permit is granted for governmental purposes benefiting the general public. However, if the principal source of revenue results from charges being levied on customers for services similar to those rendered by a profit-making corporation or business, they shall not be exempt; or

(3) Cost share roads or reciprocal right-of-way agreements.

[52 FR 25808, July 8, 1987; 52 FR 34456, Sept. 11, 1987]

§ 2808.2 Cost recovery categories.

§ 2808.2-1 Application categories.

(a) The following categories shall be used to establish the appropriate nonrefundable fee for each application pursuant to the fee schedule in § 2808.3-1 of this title:

(1) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and no field examination is required.

(2) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 1 field examination to verify existing data is required.

(3) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant; and 2 field examinations to verify existing data are required.

(4) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which some original data are required to be gathered to comply with the National Environmental Policy Act and other statutes; and 2 or 3 field examinations are required.

(5) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of public lands for which the gathering of original data are required to comply with the National Environmental Policy Act and other statutes; and 3 or more field examinations are required.

§ 2808.2-2 Category determination.

(a) The authorized officer shall determine the appropriate category and collect the required application processing fee pursuant to §§ 2808.3-1 and 2808.5 of this title before processing an application. A record of the authorized officer's category determination shall be made and given to the applicant. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(b) During the processing of an application, the authorized officer may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made and furnished to the applicant. The revised determination is appealable in the same manner as an original category determination under paragraph (a) of this section. No other changes of category determination shall be permitted.

§ 2808.3 Fees and payments.

§ 2808.3-1 Application fees.

(a) The fee by category for processing an application for a right-of-way or temporary use permit is:

Category	Fee
I	$125
II	300
III	550
IV	925
V	[1]

[1] As required.

(b) Where the amount submitted by the applicant under paragraph (a) of this section exceeds the amount of the required fee determined by the authorized officer, the excess shall be refunded. If requested in writing by the applicant, the authorized officer may apply all or part of any such refund to the grant monitoring fee required under § 2808.4 of this title or to the rental payment required by § 2803.1-2 of this title.

(c) Upon a determination that an application falls under Category V:

(1) The authorized officer shall:

(i) Complete a preliminary scoping of the issues involved;

(ii) Prepare a preliminary work plan;

(iii) Develop a preliminary financial plan, estimating the actual costs to be incurred by the United States in the processing of the application; and

(iv) Discuss funding availability, options for cost reimbursement (i.e., a determination of actual costs under section 304(b) of the Act, paying all actual costs, or selecting the 1 percent ceiling), and information to be submitted by the applicant, including construction costs and other financial information.

(2) An applicant/holder may submit a written analysis of the estimated actual cost showing specific monetary value considerations, public benefits, public services, or other data or information which would support a finding that an application for a right-of-way grant or temporary use permit qualified for a reduction or waiver of cost reimbursement under section 303(b) of the Act or § 2808.5 of this title. If the applicant elects a cost analysis under this paragraph, the provisions of paragraph (f) of this section shall not apply.

(d) The authorized officer shall discuss the preliminary plans and data and verify the information that may be submitted under paragraph (c) of this section by the applicant. The applicant is encouraged to do all or part of any special study or analysis required in connection with the processing of the application to standards established by the authorized officer.

(e) After coordination with the applicant as required by paragraph (d) of this section, the authorized officer shall develop final scoping, work and financial plans which reflect any work the applicant agrees to do and complete a final estimate of the amount of the actual costs to be reimbursed by the applicant, giving consideration to the factors set forth in section 304(b) of the Act.

(f) An applicant may elect to waive consideration of reasonable costs under paragraph (e) of this section and either: (1) Agree to pay all actual costs incurred by the United States in processing the application and monitoring the grant or temporary use permit; or (2) pay the actual costs of processing the application and monitoring the right-of-way grant up to the amount estimated by the authorized officer to equal 1 percent of the applicant's planned costs of construction of the project on the public lands for which a right-of-way grant is sought. Under this alternative, the applicant shall not be responsible for actual costs exceeding 1 percent of the estimated cost of constructing the proposed facilities on public lands. The request for a waiver shall be in writing and filed with the authorized officer.

(g) The applicant shall reimburse the United States for the applicant's share of costs, as determined under paragraphs (e) and (f) of this section, before the grant or permit shall issue.

(h) Where a State Director grants a reduction or waiver of cost reimbursement under the provisions of paragraph (e) of this section and/or § 2808.5 of this title or where the reimbursable costs of processing an application are determined to exceed 1 percent of the cost of construction of the facilities under paragraph (f) of this section, the necessary funding shall be available either through the Bureau's appropriation process or otherwise made available for the processing of the application or such processing shall not proceed.

(i) The authorized officer shall provide the applicant with a written determination of the reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) and (f) of this section and § 2808.5 of this title. This determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

§ 2808.3-2 Periodic advance payments.

(a) The authorized officer may periodically estimate the reasonable costs expected to be incurred by the United States for specific work periods in processing an application determined to be in Category V or monitoring the right-of-way grant or temporary use permit under the provisions of § 2808.3-1 (e) through (f) of this title and shall notify the applicant of the estimated amount to be reimbursed for the period and the applicant shall make payment of such estimated reimbursable costs prior to the incurring of such costs by the United States.

(b) If the payments required by paragraph (a) of this section exceed the actual costs incurred by the United States, the authorized officer shall adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant shall not set off or otherwise deduct any debt due it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(c) The authorized officer may re-estimate the actual costs determined under § 2808.3-1 (e) through (g) of this title at any time it is determined that a change warranting a re-estimate occurs. An appeal of a re-estimate shall be treated in the same manner as an original estimate made under § 2808.3-1(e) of this title.

(d) Before issuance of a right-of-way grant or temporary use permit, an applicant shall pay such additional amounts as are necessary to reimburse the United States in full for any costs incurred, but not yet paid under § 2808.3-1(h) of this title.

§ 2808.3-3 Costs incurred for a withdrawn or denied application.

(a) An applicant whose application is denied is liable for any costs incurred by the United States in processing the application. Those amounts that have not been paid are due within 30 days of the receipt of a bill from the authorized officer identifying the amount due.

(b) An applicant who withdraws an application before a grant or temporary use permit is issued is liable for all costs incurred by the United States in processing the application up to the date the authorized officer receives the written notice of withdrawal, and for costs subsequently incurred in terminating the processing of said application. Those amounts that have not been paid are due within 30 days of receipt of a bill from the authorized officer identifying the amount due.

§ 2808.3-4 Joint liability for payments.

(a) When 2 or more applications for a right-of-way grant are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by § 2808.3 of this title, subject however, to the provisions of § 2808.1(b) of this title. Each applicant shall be responsible for the reimbursement of the reasonable costs identified with his/her application. Costs that are not readily identifiable with either of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications, generally, shall be paid by each applicant in equal shares or such other proportion as may be agreed to in writing by the applicants and the authorized officer prior to the United States incurring such costs.

(b) When, through partnership, oint venture or other business arangements, more than 1 person, partership, corporation, association or ther entity apply together for a ight-of-way grant or temporary use ermit, each such applicant shall be ointly and severally liable for costs nder § 2808.3 of this title for the ntire system, subject however, to the rovision of § 2808.1(b) of this title.

§2808.4 Reimbursement of costs for monitoring.

(a) A holder of a right-of-way grant or temporary use permit for which a fee was assessed under § 2808.3 of this title shall, prior to the United States incurring such costs, reimburse the United States for costs to be incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way grant or temporary use permit area, and for protection and rehabilitation of the lands involved, under the following schedule:

(1) The same category as determined under § 2808.2-2 of this title for processing of an application for a right-of-way grant or temporary use permit shall be used for monitoring. The one-time fee for monitoring a right-of-way grant or temporary use permit determined to be in Categories I through IV is as follows:

Category	Fee
I	$50
II	75
III	100
IV	200

(2) The monitoring fee for a right-of-way grant or temporary use permit determined to be in Category V shall be included with the costs determined under §§ 2808.3-1 through 2808.3-4 of this title.

(b) The holder shall submit the payment for the cost of monitoring required by paragraph (a)(1) of this section or the first periodic advance payment required under § 2808.3-2 of this title, as appropriate, along with the written acceptance of the terms and conditions of the grant or permit. No right-of-way grant or temporary use permit shall be issued until the required payment is made.

[52 FR 25808, July 8, 1987; 52 FR 36576, Sept. 30, 1987]

§ 2808.5 Other cost considerations.

(a) The State Director, after consultation with an applicant or holder making a request for a reduction or waiver of reimbursable costs under § 2808.3-1 of this title, may reduce or waive reimbursement required under §§ 2808.3-1 through 2808.3-4 of this title. In reaching a decision, the State Director may require the applicant/holder to submit in writing any information or data in addition to that required by § 2808.3-1(c) of this title that he/she determines to be needed to support a proposed finding that an application, grant or temporary use permit qualifies for a reduction or waiver of cost reimbursement. Action on a Category V application shall be suspended pending the State Director's decision.

(b) The State Director may base the decision to reduce or waive reimbursable costs on any of the following factors:

(1) The applicant's/holder's financial condition is such that payment of the fee would result in undue financial hardship;

(2) The application processing or grant monitoring costs are determined to be grossly excessive in relation to the costs of constructing the facilities or project requiring the right-of-way grant or temporary use permit on the public lands;

(3) A major portion of the application processing or grant monitoring costs are the result of issues not related to the actual right-of-way grant or temporary use permit;

(4) The applicant/holder is a nonprofit organization, corporation or association which is not controlled by or a subsidiary of a profitmaking enterprise;

(5) The studies undertaken in connection with the processing of the application have a public benefit;

(6) The facility or project requiring the right-of-way grant will provide a

special service to the public or to a program of the Secretary;

(7) A right-of-way grant is needed to construct a facility to prevent or mitigate damages to any lands or improvements or mitigate hazards or danger to public health and safety resulting from an Act of God, an act of war or negligence of the United States;

(8) The holder of a valid existing right-of-way grant is required to secure a new right-of-way grant in order to relocate facilities which are required to be moved because the lands are needed for a Federal or federally funded project, if such relocation is not funded by the United States;

(9) Relocation of a facility on a valid existing right-of-way grant requires a new or amended right-of-way grant in order to comply with the law, regulations or standards of public health and safety and environmental protection which were not in effect at the time the original right-of-way grant or temporary use permit was issued; or

(10) It is demonstrated that because of compelling public benefits or public services provided, or for other causes, collection of reimbursable costs by the United States for processing an application, for a grant or permit would be inconsistent with prudent and appropriate management of the public lands and the equitable interest of the applicant/holder or of the United States.

(c) The State Director may consider a reduction or waiver of fees under this section in determining reimbursable costs made under § 2808.3 of this title. Said determination is a final decision for purposes of appeal under § 2804.1 of this title. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2808.6 of this title.

(d) Notwithstanding a finding by the State Director that there is a basis for reduction of the costs required to be reimbursed under this subpart, the State Director may not reduce such costs if funds to process the application(s) or to monitor the grant(s) or permit(s) are not otherwise available or may delay such decision pending the availability of funds.

[52 FR 25808, July 8, 1987; 52 FR 34456, Sept. 11, 1987]

§ 2808.6 Action pending decision on appeal.

(a) Where an appeal is filed on an application determined under § 2808.2-2(a) of this title to be in Categories I through IV, an application shall not be accepted for processing without payment of the fee for such application according to the category determined by the authorized officer; however, when payment is made, the application may be processed and, if proper, the grant or temporary use permit issued. The authorized officer shall make any refund or other adjustment directed as a result of an appeal.

(b) Where an appeal is filed for an application determined under § 2808.2-2(a) of this title to be in Category V or for a related cost reimbursement determination under § 2808.3-1 (e) through (g) or § 2808.5(c) of this title, processing of the application shall be suspended pending the outcome of the appeal.

[52 FR 25808, July 8, 1987; 52 FR 36576, Sept. 30, 1987]

PART 2810—TRAMROADS AND LOGGING ROADS

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

Sec.
2812.0-3 Authority.
2812.0-5 Definitions.
2812.0-6 Statement of policy.
2812.0-7 Cross reference.
2812.1 Application procedures.
2812.1-1 Filing.
2812.1-2 Contents.
2812.1-3 Unauthorized use, occupancy, or development.
2812.2 Nature of permit.
2812.2-1 Nonexclusive license.
2812.2-2 Right of permittee to authorize use by third parties.
2812.2-3 Construction in advance of permit.
2812.3 Right-of-way and road use agreement.
2812.3-1 Rights over lands controlled by applicant.
2812.3-2 Other roads and rights-of-way controlled by applicant.
2812.3-3 Form of grant to the United States, recordation.
2812.3-4 Where no road use agreement is required.

Sec.
2812.3-5 Use by the United States and its licensees of rights received from a permittee.
2812.3-6 Duration and location of rights granted or received by the United States.
2812.3-7 Permittee's agreement with United States respecting compensation and adjustment of road use.
2812.4 Arbitration and agreements.
2812.4-1 Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.
2812.4-2 Compensation payable by United States to permittee for use of road.
2812.4-3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.
2812.4-4 Arbitration procedure.
2812.5 Payment to the United States, bond.
2812.5-1 Payment required for O. and C. timber.
2812.5-2 Payment to the United States for road use.
2812.5-3 Bond in connection with existing roads.
2812.6 Approval and terms of permit.
2812.6-1 Approval.
2812.6-2 Terms and conditions of permit.
2812.7 Assignment of permit.
2812.8 Cause for termination of permittee's rights.
2812.8-1 Notice of termination.
2812.8-2 Remedies for violations by licensee.
2812.8-3 Disposition of property on termination of permit.
2812.9 Appeals.

AUTHORITY: 43 U.S.C. 1181a, 1181b, 1732, 1733, and 1740.

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

SOURCE: 35 FR 9638, June 13, 1970, unless otherwise noted.

§ 2812.0-3 Authority.

Sections 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740), and the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b), provide for the conservation and management of the Oregon and California Railroad lands and the Coos Bay Wagon Road lands and authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through permits and rights-of-way.

[54 FR 25855, June 20, 1989]

§ 2812.0-5 Definitions.

Except as the context may otherwise indicate, as the terms are used in this paragraph:

(a) *Bureau* means Bureau of Land Management.

(b) *Timber of the United States* or *federal timber* means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

(c) *State Director* means the State Director, Bureau of Land Management, or his authorized representative.

(d) *Authorized Officer* means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.

(e) *O. and C. lands* means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.

(f) *Tramroads* include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

(g) *Management* means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(h) *Licensee* of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(i) *Direct control* of a road, right-of-way, or land, by an applicant for a permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way of land in accordance with this paragraph.

(j) *Indirect control* of a road, right-of-way, or land, by an applicant hereunder means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 2812.0-6 Statement of policy.

(a) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

(b) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(c) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of Federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(d) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees:

(1) Rights-of-way across lands controlled directly or indirectly by him;

(2) The right to use, to the extent indicated in §§ 2812.3-5 and 2812.3-6, any portions of the road system or rights-of-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect;

(3) The right to extend such road system across the operator's lands to reach federal roads or timber; and

(4) In addition, in the limited circumstances set forth in § 2812.3-2 of this subpart the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

(e) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with §§ 2812.3-7 to 2812.4-4.

(f) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under subpart 2812 without requesting any rights with respect to roads, rights-of-way or lands which the authorized officer finds will not be required for management of or access to Federal timber, or timber included in a cooperative agreement. Where, however, the authorized officer finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of rights-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the authorized officer that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the authorized officer has reasonable doubt as to such capacity, he will not request rights over such a road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or by extension monies appropriated for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(g) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the authorized officer will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

(h) The authorized officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. The permits shall be revocable by the authorized officer, the State Director, or the Secretary for violation of their terms and conditions or of these regulations or if hazardous conditions result from the construction, maintenance or use of the rights-of-way by the permittees or those acting under their authority. As a condition for the granting of such permits, the applicant must comply with §§ 2812.3-1 and 2812.3-3 of this subpart to the extent that rights-of-way and road use rights are needed to remove government timber offered for sale in the same general area during the period for which the short term right-of-way is granted.

(i) The authorized officer may, in his discretion, issue to private operators rights-of-way across O. and C. lands, needed for the conduct of salvage operations, for a period not to exceed five years. A salvage operation as used in this paragraph means the removal of trees injured or killed by windstorms, insect infestation, disease, or fire, together with any adjacent green timber needed to make an economic logging show. As a condition of the granting of such rights-of-way, the operator will be required, when the authorized officer deems it necessary, to grant to the United States and its licensees for the conduct of salvage operations on O. and C. lands for a period not to exceed five years, rights-of-way across lands controlled directly or indirectly by him and to grant the right to use to the extent indicated in §§ 2812.3-5 and 2812.3-6 any portions of the road system controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the requirements of both the operator and of the United States and its licensees.

[35 FR 9637, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.0-7 Cross reference.

For disposal of timber or material to a trespasser, see § 9239.0-9 of this chapter.

§ 2812.1 Application procedures.

§ 2812.1-1 Filing.

(a) An application for a permit for right-of-way over the O. and C. land must be submitted in duplicate on form prescribed by the Director an filed in the appropriate district offic Application forms will be furnishe upon request.

(b) Any application filed hereunde including each agreement submitte by the applicant as a part thereof as a condition precedent to the iss ance of a permit, may be withdra by the applicant by written notice livered to the authorized officer pr to the time the permit applied for h been issued to, and accepted by, t applicant.

[35 FR 9637, June 13, 1970, as amende 41 FR 21642, May 27, 1976]

§ 2812.1-2 Contents.

(a) An individual applicant and e member of any unincorporated a ciation which is an applicant m state in the application whether h a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of § 2802.1-4.

(b) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

(c) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile. Showing the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the authorized officer may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms as approved by the Director.

(d) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(e) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of § 2812.0-5(i), the portions thereof which the applicant indirectly controls within the meaning of § 2812.0-5(j), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

§ 2812.1-3 Unauthorized use, occupancy, or development.

Any use, occupancy, or development of the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (O & C) lands (as is defined in 43 CFR 2812.0-5(e)), for tramroads without an authorization pursuant to this subpart, or which is beyond the scope and specific limitations of such an authorization, or that cause unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0-5. Anyone determined by the authorized officer to be in violation of this section shall be notified of such trespass in writing and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, part 2800 of this title.

[54 FR 25855, June 20, 1989]

§ 2812.2 Nature of permit.

§ 2812.2-1 Nonexclusive license.

Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 2812.6-2 and 2812.8-3, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 2812.8.

§ 2812.2-2 Right of permittee to authorize use by third parties.

A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in §§ 2812.4-1, 2812.4-3, and 2812.4-4 of this subpart.

§ 2812.2-3 Construction in advance of permit.

The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with §§ 2812.1-1, 2812.1-2, 2812.3-1 and 2812.5-1.

§ 2812.3 Right-of-way and road use agreement.

§ 2812.3-1 Rights over lands controlled by applicant.

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0-6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly con-

ed by him, either to obtain such
s for the United States or to
e a showing satisfactory to the au-
ized officer that he has negotiated
efor in good faith and to waive as
e United States, its licensees and
iittees any exclusive or restricted
t he may have to such lands as are
ectly controlled by him.

) In addition, to agree to permit
United States and its licensees,
n the payment of fair compensa-
as hereinafter provided, to use
er the terms and conditions of this
graph such portion as the appli-
directly controls of the road
em and rights-of-way which are an
gral part of or may be added to
road system with which the right-
ay applied for will connect, and as
he portions of such road system or
its-of-way as the applicant indirect-
controls, either to obtain such
its for the United States and its li-
sees or to make a showing satisfac-
y to the authorized officer that he
negotiated therefor in good faith
, in such latter circumstance, to
ive as to the United States and its
ensees any exclusive or restricted
ht he may have in such portion of
e road system and rights-of-way.

812.3-2 Other roads and rights-of-way controlled by applicant.

In addition to the private road sys-
ms and rights-of-way described in
2812.3-1 in the event the applicant
ntrols directly or indirectly other
ads or rights-of-way in any O. and C.
ea where the authorized officer of
e Bureau finds that, as of the time
f filing or during the pendency of the
pplication, the United States is un-
asonably denied access to its timber
r management purposes or where, as
f such time, competitive bidding by
l prospective purchasers of timber
anaged by the Bureau in the O. and
area, or of other Federal timber
termingled with or adjacent to such
mber, is substantially precluded by
ason of the applicant's control,
rect or indirect, of such roads or
ghts-of-way, the authorized officer
ay require the applicant to negotiate
agreement granting to the United
ates and its licensees the right to
e, in accordance with the terms and conditions of this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

§ 2812.3-3 Form of grant to the United States, recordation.

Any grant of rights to the United States under this section shall be executed on a form prescribed by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district manager.

§ 2812.3-4 Where no road use agreement is required.

Where, in the judgment of the authorized officer, it is consistent with the policy set forth in subpart 2811 he may issue a permit without requesting the applicant to grant any rights to the United States under this paragraph.

§ 2812.3-5 Use by the United States and its licensees of rights received from a permittee.

The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by §§ 2812.3-7 and 2812.4-3.

§ 2812.3-6 Duration and location of rights granted or received by the United States.

The rights-of-way granted by the United States under any permit issued under § 2812.6, subject to the provisions of § 2812.7, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

§ 2812.3-7 Permittee's agreement with United States respecting compensation and adjustment of road use.

(a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensees shall be required to amortise such capital cost; provisions for road maintenance; the use in addition to the uses set forth in § 2812.3-5 which the United States and its licensees may make of the road system involved, a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the authorized officer may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the authorized officer may agree that upon the filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(b) The provisions of § 2812.4 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 2812.4 Arbitration and agreements.

§ 2812.4-1 Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.

(a) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 2812.3-7 of this subpart, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4-4. During the pendency of such arbitration proceedings the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

(b) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 2812.3-5. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(c) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(d) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 2812.4-2 Compensation payable by United States to permittee for use of road.

In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under § 2812.3-7 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.

§ 2812.4-3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.

(a) When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under § 2812.3-7 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4-4.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 2812.4-4 Arbitration procedure.

(a) Within 10 days after the delivery of a written request for arbitration under § 2812.4-1 or § 2812.4-3 of this

ibpart each of the parties to the dis-
greement shall appoint an arbitrator
nd the two arbitrators thus appoint-
d shall select a third arbitrator. If
ither party fails to appoint an arbi-
rator as provided herein, the other
arty may apply to a court of record
f the State of Oregon for the ap-
ointment of such an arbitrator, as
rovided by the laws of such State. If
ithin ten days of the appointment of
e second of them, the original two
rbitrators are unable to agree upon a
ird arbitrator who will accept the
ppointment, either party may peti-
on such a court of record of the
tate of Oregon for the appointment
f a third arbitrator. Should any va-
ancy occur by reason of the resigna-
on, death or inability of one or more
f the arbitrators to serve, the vacancy
all be filled according to the proce-
ures applicable to the appointment of
e arbitrator whose death, disability,
r other inability to serve, created the
acancy.

(b) By mutual agreement, the par-
es may submit to a single arbitration
roceeding controversies arising under
oth §§ 2812.4-1 and 2812.4-3.

(c) The arbitrators shall hear and
etermine the controversy and make,
le, and serve their award in accord-
nce with the substantive standards
rescribed in §§ 2812.4-1 and 2812.4-3,
r the type of controversy involved
d in accordance with the procedures
tablished by the laws of the State of
regon pertaining to arbitration pro-
edings. A copy of the award shall
o be served at the same time upon
e authorized officer or the State Di-
ctor, either personally or by regis-
red mail.

d) Costs of the arbitration proceed-
s shall be assessed by the arbitra-
s against either or both of the par-
s, as may appear equitable to the ar-
rators, taking into account the
ginal contentions of the parties, the
imate decision of the arbitrators
l such other matter as may appear
vant to the arbitrators.

FR 9638, June 13, 1970, as amended at
R 21642, May 27, 1976]

§ 2812.5 Payment to the United States, bond.

§ 2812.5-1 Payment required for O. and C. timber.

An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

§ 2812.5-2 Payment to the United States for road use.

(a) A permittee shall pay a basic fee of $5 per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for 5 years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than 5 years, the basic fee for each 5-year period or for the remainder of the last period, if less than 5 years, must be paid in advance at 5-year intervals: *Provided, however,* That in those cases where the permittee has executed under §§ 2812.3-1 to 2812.3-5 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under § 2812.3-1(b).

(b) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if, subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under this subpart 2812: *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and § 2812.4-1(b), as may be applicable.

(c) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with paragraph (b) of this section except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however,* That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with §§ 2812.3-1 to 2812.3-5 to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom.

§ 2812.5-3 Bonds in connection with existing roads.

An applicant for permit or a permittee desiring to use an existing road owned or controlled by the United States, shall prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an equivalent amount in cash or negotiable securities of the United States and the bond shall be conditioned upon compliance with subpart 2812 and the terms and conditions of the permit.

§ 2812.6 Approval and terms of permit.

§ 2812.6-1 Approval.

(a) Upon the applicant's compliance with the appropriate provisions of this paragraph and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon a form prescribed by the Director.

(b) The authorized officer may waive the requirements of §§ 2812.1-2 (c) and (e) and 2812.5-3 in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

§ 2812.6-2 Terms and conditions of permit.

(a) As to all permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under §§ 2812.3-1 to 2812.3-5 with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations the permittee shall unreasonably withhold his assent, the authorized officer shall refer the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer, and if the permittee nevertheless unreasonably withholds such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the authorized officer and making payment therefor.

(3) To take adequate precaution to prevent forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by the permittee or any fire caused by the permittee; to do no burning on or near the right-of-way without State permit during the seasons that permits are required and in no event to set fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 2812.4-1, 2812.4-3, and 2812.4-4.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under §§ 2812.3-1 to 2812.3-5 of this subpart to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under this paragraph to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(8) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the authorized officer may otherwise permit or direct to clean up and remove from the road

and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use; *Provided, however,* That the road and all usable road improvements shall be left in place.

(10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under §§ 2812.1-3 to 2812.1-5.

(11) To grant to the United States, upon request of an authorized officer in lieu of the rights-of-way across legal subdivisions granted pursuant to §§ 2812.1-3 to 2812.1-5, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided,* That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further,* That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with § 2812.4-2. The authorized officer shall waive the requirement under this paragraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 2812.7 Assignment of permit.

Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the authorized officer for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1-2 and 2812.3-1 to 2812.3-5, and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

[35 FR 9638, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.8 Cause for termination of permittee's rights.

§ 2812.8-1 Notice of termination.

(a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any re-

uirement of such permit or this para- raph, knowing such representation to e false, or makes such representation n reckless disregard of the truth.

(b) The authorized officer in his dis- retion may elect to terminate any ermit or right-of-way issued under his paragraph, if the permittee shall ail to comply with any of the provi- ions of such regulations or make de- aults in the performance or obliga- ion of any of the conditions of the ermit, and such failure or default hall continue for 60 days after service f written notice thereof by the au- horized officer.

(c) Notice of such termination shall e served personally or by registered ail upon the permittee, shall specify he misrepresentation, failure or de- ault involved, and shall be final, sub- ect, however, to the permittee's right f appeal.

(d) Termination of the permit and of he right-of-way under this section hall not operate to terminate any ight granted to the United States ursuant to this paragraph, nor shall affect the right of the permittee, fter the termination of his permit nd right-of-way to receive compensa- ion and to establish road operating ules with respect to roads controlled y him which the United States has he right to use and to permit its li- ensees to use; nor shall it relieve the ermittee of his duty under this para- raph, to submit to and be bound by rbitration pursuant to §§ 2812.4-1, 812.4-3, and 2812.4-4.

2812.8-2 Remedies for violations by licensee.

(a) No licensee of the United States ill be authorized to use the roads of a ermittee except under the terms of a mber sale contract or a cooperative reement with the United States hich will require the licensee to mply with all the applicable provi- ons of this paragraph, and any agree- ents or awards made pursuant there- . If a licensee fails to comply with regulations, agreements, or ards, the authorized officer will e such action as may be appropri- under the provisions of the timber contract or cooperative agree- nt.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to § 2812.9 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 2812.8-3 Disposition of property on termination of permit.

Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed 6 months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 2812.9 Appeals.

An appeal pursuant to part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

[41 FR 29123, July 15, 1976]

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities: General

Sec.
2880.0-3 Authority.
2880.0-5 Definitions.
2880.0-7 Scope.

Subpart 2881—Terms and Conditions of Right-of-Way Grants and Temporary Use Permits

2881.1 Nature of interest.
2881.1-1 Nature of right-of-way interest.
2881.1-2 Nature of temporary use permit interest.
2881.1-3 Reservation of rights to the United States.
2881.2 Terms and conditions of interest granted.
2881.3 Unauthorized use, occupancy or development.

Subpart 2882—Applications

2882.1 Preapplication activity.
2882.2 Requirements for applications for right-of-way grants and temporary use permits.
2882.2-1 Applicant qualifications.
2882.2-2 Application filing.
2882.2-3 Application content.
2882.3 Application processing.
2882.4 Interagency agreements.

Subpart 2883—Administration of Rights Granted

2883.1 General requirements.
2883.1-1 Cost reimbursement.
2883.1-2 Rental payments.
2883.1-3 Bonding.
2883.1-4 Liability.
2883.1-5 Common carriers.
2883.1-6 Export.
2883.2 Holder activity.
2883.3 Construction procedures.
2883.4 Operation and maintenance.
2883.5 Immediate temporary suspension of activities.
2883.6 Suspension and termination of right-of-way grants and temporary use permits.
2883.6-1 Suspension and termination of right-of-way grants.
2883.6-2 Suspension and termination of temporary permits.
2883.7 Change in Federal jurisdiction or disposal of lands.
2883.8 Restoration of Federal lands.

Subpart 2884—Appeals

2884.1 Appeals procedure.

Sec.

Subparts 2885-2886—[Reserved]

Subpart 2887—Over Lands Subject to Mineral Lease

2887.0-3 Authority.

AUTHORITY: 30 U.S.C. 185, sec. 28, unless otherwise noted.

SOURCE: 44 FR 58129, Oct. 9, 1979, unless otherwise noted.

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities: General

§ 2880.0-3 Authority.

The provisions of this subpart are issued under the authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), unless otherwise noted.

§ 2880.0-5 Definitions.

As used in this part, the term:

(a) *Act* means section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

(b) *Agency head* means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, who has jurisdiction over the surface of Federal lands.

(c) *Applicant* means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency, which applies for a right-of-way grant or temporary use permit under the Act.

(d) *Authorized officer* means any employee of the department of the Interior to whom has been delegated the authority to perform the duties described in this part.

(e) *Federal lands* means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

(f) *Holder* means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency which has received a right-of-way grant or temporary use permit under the Act.

(g) *Oil or gas* means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(h) *Temporary use permit* means a revocable nonpossessory privilege to use specified Federal lands in the vicinity of a right-of-way in connection with the construction, operation, maintenance, or termination of a pipeline or for the protection of the natural environment or public safety.

(i) *Pipeline* means a line of traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

(j) *Pipeline system* means all facilities, whether or not located on Federal lands, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.

(k) *Production facilities* means a lessee's or lease operator's pipes and equipment used on his lease solely to aid in his extraction, storage, and processing of oil and gas. The term includes storage tanks and processing equipment, and gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery. The term also includes pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

(l) *Related facilities* means those tructures, devices, improvements, and ites, the substantially continuous use f which is necessary for the operation r maintenance of a pipline, which are cated on Federal lands, and which e authorized under the Act, includ- g but not limited to: Supporting ructures; airstrips; roads; campsites; mp stations, including associated liports, structures, yards, and nces; valves, and other control de- es; surge and storage tanks; bridges; nitoring and communication de- es and structures housing them; ter- nals, including structures, yards, ks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or nonconnected or contiguous or noncontiguous to the pipe.

(m) *Right-of-way* means the Federal land authorized to be occupied pursuant to a right-of-way grant.

(n) *Right-of-way grant* means a document authorizing a nonpossessory, nonexclusive right to use Federal lands for the limited purpose of construction, operation, maintenance, and termination of a pipeline.

(o) *Secretary* means the Secretary of the Interior.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 59880, Sept. 11, 1980]

§ 2880.0-7 Scope.

(a) These regulations apply to any application now on file or hereafter filed with Federal agencies for issuance, modification, or renewal of a right-of-way grant or a temporary use permit, except where the surface of the Federal lands involved in the right-of-way or temporary use permit area is under the jurisdiction of a single Federal agency, including bureaus and agencies within the Department of the Interior, other than the Bureau of Land Management.

(b) In addition, the provisions of § 2883.5 of this title apply to all right-of-way grants and temporary use permits heretofore issued pursuant to section 28 of the Mineral Leasing Act by the Bureau of Land Management, and to permits, grants, and other authorizations heretofore issued by the Secretary or his delegate in connection with the Trans-Alaska Oil Pipeline System (TAPS). Further, the permits, grants and other authorizations heretofore and hereafter issued by the Secretary or his delegate in connection with the Trans-Alaska Pipeline System are subject to § 2883.1-1 of this title.

(c) The regulations of this part do not apply to the reservation of rights-of-way for Federal departments or agencies. Such rights-of-way shall be reserved in accordance with the regulations in subpart 2800 of this title.

(Sec. 28, Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), sec. 203, Trans-Alaska Pipeline Authorization Act (Pub. L. 95-153); Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a))

[44 FR 58129, Oct. 9, 1979, as amended at 49 FR 31209, Aug. 3, 1984; 51 FR 31765, Sept. 5, 1986]

Subpart 2881—Terms and Conditions of Right-of-Way Grants and Temporary Use Permits

§ 2881.1 Nature of interest.

§ 2881.1-1 Nature of right-of-way interest.

(a) The United States retains a right to use a right-of-way and temporary use permit area or authorize the use of it to others in any manner not inconsistent with pipeline construction, operation, maintenance, and termination. The holder of a right-of-way grant or temporary use permit has no right to any of the products of the land including, but not limited to, timber, forage, mineral, and animal resources. The holder may not allow the use of a right-of-way or temporary use permit area by others except its contractors, subcontractors, employees, agents or servants for purposes of construction, operation, maintenance, or termination of the pipeline.

(b) A holder shall not use a right-of-way and temporary use permit area for any purpose other than for the construction, operation, maintenance, and termination of the pipeline specified in the holders right-of-way grant. A holder shall not locate or construct any other pipelines, including looping lines, or other improvements within a right-of-way without first securing appropriate authorization therefor.

(c) The width of a right-of-way shall not exceed 50 feet plus the ground occupied by the pipeline (that is, the pipe and related facilities) unless the authorized officer finds and records the reasons for his finding, that a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety.

(d) An applicant may apply to the authorized officer for a wider right-of-way in limited areas, if necessary:

(1) For the operation and maintenance of the project after construction;

(2) To protect the environment; or

(3) To provide for the public safety. If the authorized officer finds that the additional width is necessary for one of the above reasons, he may authorize a wider width. Such authorization shall include a written report recording the reasons why the additional width is necessary.

(e) A right-of-way grant issued or renewed under these regulations shall be limited to a reasonable term, not to exceed 30 years. No term shall be longer than is necessary to accomplish the purpose of the grant. The authorized officer shall determine the duration of each right-of-way grant, taking into consideration, among other things:

(1) The cost of the facility,

(2) Its useful life,

(3) Any public purpose it serves, and

(4) Potentially conflicting uses of the land.

(f) Except where a right-of-way grant has terminated by its terms upon the occurrence of a fixed or agreed upon condition, event, or time, it shall be renewed if the pipeline is being operated and maintained in accordance with all provisions of the right-of-way grant, these regulations and the Act. The authorized officer may modify the terms and conditions of the right-of-way grant at the time of renewal.

(g) No purported transfer of an interest in a right-of-way grant, a right-of-way, or any portion of a pipeline system located within a right-of-way, shall be valid without the prior written approval of the authorized officer. Applications for such approval shall be directed to the authorized officer. A transferee shall meet all the requirements of an original pipeline right-of-way grantee is bound by and shall assume all of the transferor's responsibility to the United States with respect to the transferred interest and shall agree to be bound by all terms of any outstanding right-of-way grant or temporary use permit. Applications for a transfer of interest shall be accompanied by a nonrefundable fee of $50, except that where a holder assigns more than 1 right-of-way grant as part of a single action, the authorized officer, due to economies of scale, may set a fee of less than $50 per assignment.

[44 FR 58129, Oct. 9, 1979, as amended at 52 FR 25821, July 8, 1987]

§ 2881.1-2 Nature of temporary use permit interest.

(a) A temporary use permit does not grant any interest in land and is revocable at will by the authorized officer.

(b) The area covered by a temporary use permit shall be no greater than is necessary to accommodate the authorized use or to protect the environment or provide for public safety.

(c) The duration of a temporary use permit shall be determined by the authorized officer in a manner that is consistent with construction activities, and is not to exceed that length of time needed to accomplish the purpose for which the permit is sought. The term of a temporary use permit shall not exceed 3 years subject to the provisions of this section.

(d) A temporary use permit may be renewed at the discretion of the authorized officer, but the permittee has no right of renewal. The authorized officer may modify the terms and conditions of the temporary use permit at the time of renewal.

(e) A temporary use permit may be assigned at the discretion of the authorized officer, provided the use for which the permit was issued continues.

§ 2881.1-3 Reservation of rights to the United States.

All rights in Federal lands subject to a right-of-way grant or temporary use permit not expressly granted are retained by the United States. These rights include, but are not limited to:

(a) A continuing right of access across right-of-way and temporary use permit areas to all Federal lands (including the subsurface and air space);

(b) A continuing right of physical entry to any part of the pipeline system for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any law or regulation; and

(c) The right to make, issue, or grant right-of-way grants, temporary use permits, easements, leases, licenses, contracts, patents, permits and other authorizations to or with third parties for compatible uses on, under, above, or adjacent to the Federal lands subject to a right-of-way grant or temporary use permit.

§ 2881.2 Terms and conditions of interest granted.

(a) An applicant, by accepting a right-of-way grant or a temporary use permit, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the pipeline system construction, operation and maintenance which is authorized and all such additional State and Federal law, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit;

(2) That in the construction, operation and maintenance of the pipeline and related facilities, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision;

(3) To build and repair roads, fences and trails that may be destroyed or damaged by construction, operation or maintenance of the pipeline and related facilities and to build and maintain suitable crossings for roads and trails that intersect the right-of-way and related facilities; and

(4) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or near the right-of-way and related facilities. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, or amended under these regulations shall contain such terms, conditions, and stipulations as may be prescribed by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:

(1) Requirements for restoration, revegetation, and curtailment of erosion of the surface of the land;

(2) Requirements to insure that activities in connection with the right-of-way grant or temporary use permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal and State law;

(3) Requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat), damage to public or private property, and hazards to public health and safety; and

(4) Requirements to protect the interests of individuals living in the general vicinity of the right-of-way or temporary use permit area who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(c) Right-of-way grants or temporary use permits issued, renewed, or amended under this title shall include requirements which comply with applicable Federal and State law that will protect the safety and health of pipeline workers and the general public, including, but not limited to, protection against the sudden rupture and slow degradation of the pipeline. Applicants and holders shall design, construct, operate, and maintain all facilities in accordance with applicable Federal and State law governing pipelines and pipeline construction.

[44 FR 58129, Oct. 9, 1979, as amended at 52 FR 25821, July 8, 1987]

§ 2881.3 Unauthorized use, occupancy or development.

Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations in this part, and that has not been so authorized, or that is beyond the scope and specific limitations of such authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in § 2800.0-5. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified in writing of such trespass and shall be liable to the United States for all costs and payments determined in the same manner as set forth at § 2801.3, part 2800 of this title.

[54 FR 25855, June 20, 1989]

Subpart 2882—Applications

§ 2882.1 Preapplication activity.

(a) Upon determining that a proposed pipeline project is contemplated which would cross Federal lands under the jurisdiction of the Department of the Interior, or two or more Federal agencies, the proponent of such project is encouraged to promptly notify the appropriate office identified in § 2882.2-2 of this title or the Secretary.

(b) The authorized officer shall provide guidance to the pipeline project proponent as to:

(1) Routing constraints which exist because of current land status as reflected in land use plans and land status records;

(2) Necessary information to be included in applications for right-of-way grants or temporary use permits;

(3) Qualifications required of applicants; and

(4) Identification of on-the-ground investigations which will require temporary use permits.

(c) No right-of-way applications processing work, other than that incurred in the processing of applications for permits for temporary use of public lands in furtherance of the filing of an application and preapplication guidance under paragraph (b) of this section, shall be undertaken by the authorized officer prior to the filing of an application together with an advance payment as required by § 2883.1-1 of this title. Such processing work includes, but is not limited to, special studies such as environmental analyses, environmental impact statements, engineering surveys, resource

ntories and detailed land use or
rd analyses.
No activities, other than casual
such as, but not limited to, vehicle
on existing roads, sampling, mark-
of routes, searching, or other simi-
activities that do not disturb the
ace of the lands or require the re-
al of vegetation, shall be conduct-
n Federal lands prior to the issu-
of a right-of-way grant or a tem-
ry use permit.

R 58129, Oct. 9, 1979, as amended at 47
8807, Sept. 2, 1982; 50 FR 1309, Jan. 10,
51 FR 31765, Sept. 5, 1986]

2.2 Requirements for applications for ight-of-way grants and temporary use ermits.

2.2-1 Applicant qualifications.

An applicant for a right-of-way
t or temporary use permit shall be
zen of the United States, an asso-
on of such citizens, a corporation
nized under the laws of the
ed States, or of any State thereof,
State or local government. Aliens
not acquire or hold any direct or
ect interest in rights-of-way,
-of-way grants or temporary use
its, except that they may own or
rol stock in corporations holding
s-of-way, right-of-way grants or
orary use permits if the laws of
country do not deny similar or
rivileges to citizens of the United
s.

Each application by a partner-
corporation, association, or other
ess entity shall disclose the iden-
f the participants in the entity
hall include where applicable:

The name, address, and citizen-
f each participant (partner, asso-
r other);

Where the applicant is a corpora-
the name, address, and citizen-
f each shareholder owning 3-per-
r more of each class of shares,
er with the number and per-
e of any class of voting shares
entity which each shareholder
orized to vote; and

he name and address of each af-
controlled by, or that controls,
tity, either directly or indirect-
ere an affiliate is controlled by
tity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included.

(c) Applications filed with Federal agencies, such as the Federal Energy Regulatory Commission, to obtain a license, certificate or other authority for a project involving a right-of-way over, upon, under or through Federal lands for an oil and gas pipeline shall be simultaneously filed with the Bureau of Land Management in accordance with the provisions of § 2882.2-3 of this title.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 12571, Mar. 23, 1982]

§ 2882.2-2 Application filing.

(a) Where the Federal lands involved are under the jurisdiction of the Bureau of Land Management, Department of the Interior, application for a right-of-way grant or temporary use permit or for a renewal of either shall be filed with either the Area Manager, the District Manager or the State Director of a Bureau of Land Management office having jurisdiction over the Federal lands involved.

(b) Where the Federal lands involved are under the jurisdiction of two or more agencies of the Department of the Interior, or where the Federal lands involved are under the jurisdiction of one or more agencies of the Department of the Interior and one or more other Federal agencies, or where the Federal lands involved are under the jurisdiction of two or more non-Interior agencies, the initial application for a right-of-way grant or temporary use permit may be filed at the most convenient State Office of the Bureau of Land Management, at locations listed in § 1821.2-1 of this title or at the nearest Bureau of Land Management Office that has jurisdiction over a portion of the Federal lands involved. The Director, Bureau of Land Management will, upon notice of the application by field officials, assign a lead official and notify the applicant where all future communications concerning the project should be directed. All applications for temporary use permits that are filed subsequent to the filing of an application for a right-of-way grant shall be filed with the lead official. Applications for renewal of a right-of-way grant or temporary use permit shall be filed with the lead official.

(c) Where the Federal lands involved are under the jurisdiction of but one Federal agency, including bureaus and agencies within the Department of the Interior other than the Bureau of Land Management, applications for a right-of-way grant or temporary use permit or renewal of either shall be directed to that agency.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 34887, May 23, 1980; 47 FR 12571, Mar. 23, 1982]

§ 2882.2-3 Application content.

(a) Applications for right-of-way grants and temporary use permits shall be filed on a form approved by the Director. The application form shall contain instructions for completion of the form and shall require the following information:

(1) The name and address of the applicant and the applicant's agent, if appropriate;

(2) A description of the applicant's proposal;

(3) A map, USGS quadrangle, aerial photo or equivalent, showing the approximate location of the proposed right-of-way and facilities on public lands and existing improvements adjacent to the proposal, shall be attached to the application. Only the existing adjacent improvements which the proposal may directly affect need be shown on the map;

(4) A statement of the applicant's technical and financial capability to construct, operate, maintain and terminate the proposals;

(5) Certification by the applicant that he/she is of legal age, authorized to do business in the State and that the information submitted is correct to the best of the applicant's knowledge; and

(6) Disclose, to the extent applicable, the applicant's citizenship and the partnership, corporation, association and other business entity informati required by § 2882.2-1 of this title.

(b) The applicant may submit ad tional information to assist the thorized officer in processing the plication. Such information may clude, but is not limited to, the follo ing:

(1) Federal or State approvals quired for the proposal;

(2) A description of the alternati route(s) and mode(s) considered the applicant when developing th proposal;

(3) Copies of or reference to simila applications or grants the applican has submitted or holds;

(4) A statement of need and economic feasibility or other proposal; and

(5) A statement of the environmental, social and economic effects of the proposal.

[47 FR 12571, Mar. 23, 1982]

§ 2882.3 Application processing.

(a) The Secretary shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way grant for a pipeline 24 inches or more in diameter and no right-of-way grant for such a pipeline shall be issued until 60 days (not counting days on which the House of Representatives or the Senate has adjourned for more than 3 days) after a notice of intention to issue the right-of-way grant, together with the authorized officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(b) Upon receipt of an application for a right-of-way grant, the authorized officer shall publish a notice of the application in the FEDERAL REGISTER and an announcement in a newspaper or newpapers having general circulation in the vicinity of the Federal lands affected, or, if in the opinion of the authorized officer, the pipeline impacts are of a minor nature, the notice of application may be waived or published only in a newspaper having general circulation in the area or areas in the vicinity of the affected Federal lands. The notice shall contain a description of the pipeline systems as required in § 2882.2-3(a) (2) and (3) of this title, together with such other information as the authorized officer considers pertinent. The notice shall state where the application and related documents are available for interested persons to review. Copies of the notice shall be sent to the Governor of each State within which the pipeline system may be located, the head of each local government or jurisdiction within which the pipeline system may be located, and each agency head, for review and comment.

(c) Where an application for a right-of-way grant or temporary use permit is incomplete or not in conformity with the Act or these regulations, the authorized officer may reject the application or notify the applicant of the deficiencies and afford the applicant an opportunity to file corrections. Where deficiency notices have not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiencies and afford the applicant an opportunity to file corrections.

(d) The authorized officer may require the applicant for a right-of-way grant or temporary use permit to submit such additional information as he deems necessary for review of the application.

(e) An application for a right-of-way grant or temporary use permit which meets the requirements of the Act and of these regulations entitles the applicant only to full review of the application. Such application may be denied if the authorized officer determines that the right-of-way or use applied for would be inconsistent with the purpose to which the Federal lands involved have been committed, or would otherwise not be in the public interest.

(f) The authorized officer shall hold public meetings or hearings on an application for a right-of-way grant or temporary use permit if he determines that such hearings or meetings are appropriate and sufficient public interest exists to warrant the time and expense of such meetings or hearings. Notice of any such meetings or hearings shall be published in the FEDERAL REGISTER and in local newspapers.

(g) If the application involves a right-of-way through Federal lands under the jurisdiction of two or more Federal agencies, the authorized officer shall refer the application to the agency heads for consultation and other appropriate actions.

(h) The authorized officer shall consult with other agencies as to any additional information which should be required from the applicant, conditions or stipulations which should be imposed, and whether the right-of-way grant or temporary use permit should be issued.

(i) No right-of-way grant or temporary use permit over Federal lands under the jurisdiction of two or more Federal agencies and not within the jurisdiction of the agency by which the authorized officer is employed shall be issued or renewed by the authorized officer without the concurrence of the head of the agency administering such Federal lands or his authorized representative.

(j) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary may, after consultation with the non-Interior agencies involved, grant or renew a right-of-way or temporary use permit through the Federal lands involved, with or without the concurrence of the heads of the agencies administering such Federal lands. A right-of-way through a Federal reservation shall not be granted if the Secretary determines that it would be inconsistent with the purposes of the reservation.

(k) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions including changes in route or site location as the authorized officer considers appropriate.

(l) No right-of-way grant or temporary use permit shall be considered as being in effect until the applicant has accepted its terms, in writing. Written acceptance shall constitute an agreement between an applicant and the United States that, in consideration of the right to use Federal lands, the applicant shall abide by all terms and conditions contained therein and the provisions of applicable laws and regulations.

(m) At the discretion of the authorized officer, a provision may be placed in a right-of-way grant or temporary use permit requiring that no construction or use shall occur until a detailed construction, operation, rehabilitation and environmental protection plan has been submitted to the authorized officer and a notice to proceed has been issued. This requirement may be imposed for all or any part of the right-of-way.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 12571, Mar. 23, 1982]

§ 2882.4 Interagency agreements.

The authorized officer may enter into interagency cooperative agreements with the other Federal agencies having jurisdiction over the Federal lands involved in right-of-way grants or temporary use permits applied for and issued under this part.

Subpart 2883—Administration of Rights Granted

§ 2883.1 General requirements.

§ 2883.1-1 Cost reimbursement.

(a) (1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), prior to the United States having incurred such costs. All costs shall be paid before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to State or local governments or agencies or instrumentalities thereof where the Federal lands are used for governmental purposes and such lands and resources continue to serve the general public, except as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose princip source of revenue is derived fro charges levied on customers for ser ices rendered that are similar to ser ices rendered by a profit making co poration or business enterprise.

(3) The applicant shall submit wit each application a nonrefundable ap plication processing fee in the amoun required by a schedule of fees for thi purpose contained in paragraph (c) o this section which shall be based on review of the use of the Federal land for which the application is made, the resources affected and the complexity and costs to the United States for processing required by an application for a right-of-way grant and shall be established according to the following general categories:

(i) *Category I.* An application for right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and no field examination of the lands affected by the application is required;

(ii) *Category II.* An application for right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and one field examination of the lands affected by the application to verify the existing data is required;

(iii) *Category III.* An application fo a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the data necessary to comply with the National Environmental Policy Act are available in the office of the authorized officer; and two field examinations of the lands affected by the application to verify the data are required;

(iv) *Category IV.* An application fo a right-of-way grant or temporary use permit to authorize a use of Federal lands for which some original data are required to be gathered to comply with the National Environmental Policy Act; and two or three field examinations of the lands affected by the application are required;

(v) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which original data are required to be gathered to comply with the National Environmental Policy Act and evaluation of these data require formation of an interdisciplinary team; and three or more field examinations of the lands affected by the application are required;

(vi) *Category VI.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which the cost of processing activities will be in excess of $5,000.

(4)(i) The authorized officer may accept an application for the purpose of determining the appropriate category and the nonrefundable application processing fee; however, the authorized officer shall collect the full amount of the nonrefundable application processing fee prior to processing such application. A record of the authorized officer's category determination shall be made and given to the applicant, and the decision is a final decision for purposes of appeal under § 2884.1 of this title. Notwithstanding the pendency of such appeal, an application shall not be processed without payment of the fee determined by the authorized officer, and where such payment is made, the application may be processed and, if proper, the grant or permit issued. The authorized officer shall make any refund directed by the appeal decision. Where the amount of the nonrefundable application processing fee submitted by an applicant exceeds the amount of such fee as determined by the authorized officer, the authorized officer shall refund any excess unless requested in writing by the applicant to apply all or part of any such refund to the grant monitoring fee required by paragraph (b) of this section or to the rental payment for such grant or permit.

(ii) During the processing of an application, the authorized officer may change a category determination to place an application in Category VI at any time that it is determined that the application requires preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made, and the decision is appealable in the same manner as an original category determination made under paragraph (a)(4)(i) of this section.

(5) (i) An applicant whose application is determined to be in Category VI shall, in addition to the nonrefundable application processing fee, reimburse the United States for the full actual administrative and other costs of processing the application. The nonrefundable application processing fee required under the fee schedule shall be credited toward the total cost reimbursement obligation of such applicant. When such an application is filed, the authorized officer shall estimate the costs expected to be incurred in processing the application, inform the applicant of the estimated amount to be reimbursed and require the applicant to make periodic payments of such estimated reimbursable costs prior to such costs being incurred by the United States.

(ii) If the payments required by paragraph (a)(5)(i) of this section exceed the actual costs to the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(iii) Prior to issuance of a right-of-way grant or temporary use permit, an applicant subject to paragraph (a)(5)(i) of this section shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (a)(5)(i) of this section.

(iv) An applicant subject to paragraph (a)(5)(i) of this section whose application is denied is responsible for costs incurred by the United States in processing the application, and such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(v) An applicant subject to paragraph (a)(5)(i) of this section who withdraws an application before a decision is reached is responsible for costs incurred by the United States in processing the application up to the date the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred in terminating the application review process. Such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of a bill from the authorized officer giving the amount due.

(6) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by paragraph (a)(3) of this section. If reimbursement of actual costs is required under paragraph (a)(5)(i) of this section, each applicant shall be responsible for the costs identifiable with his/her application. Costs that are not readily identifiable with one of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications generally, shall be paid by each of the applicants in equal shares or such other proration as may be agreed to in writing by the applicants and authorized officer prior to the United States incurring such costs.

(7) When, through partnership joint venture or other business arrangement, more than one person partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly are severally liable for costs under this section.

(8) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all of the applicants shall be jointly and severally liable for costs under this section for the entire system, subject, however, to the provisions of paragraph (a)(7) of this section.

(b) (1) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under paragraph (a) of this section, the holder thereof shall, prior to the United States having incurred such costs, reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved. The monitoring cost category shall be the same as that for the application processing category for that project.

(2) The holder shall submit a monitoring cost fee along with the written acceptance of the terms and conditions of the grant or permit pursuant to § 2882.3(l) of this title. The amount of the required fee shall be determined by the schedule of fees described in paragraph (c) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required fee is paid.

(3) A holder whose application was determined to be in Category VI for application processing purposes shall reimburse the United States for the actual administrative costs and other costs of monitoring the grant or permit. When such a grant or permit is issued, the authorized officer shall estimate the costs expected to be incurred in monitoring the grant or permit, inform the holder of the estimated amount to be reimbursed and require the holder to make periodic payment of such estimated reimburseable costs prior to such costs being incurred by the United States.

(4) If the payments required by paragraph (b)(3) of this section exceed the actual costs of the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. A holder may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(5) Following termination of a right-of-way grant or temporary use permit, any grantee or permittee that was determined to be in Category VI shall pay such additional amounts as are necessary to reimburse the United

States for any costs which exceed the payments required by paragraph (b)(3) of this section.

(c) The schedules of nonrefundable fees are as follows:

(1) For processing an application for a right-of-way and/or temporary use permit:

Category	Fee
I	$125
II	275
II	350
IV	600
V	1,000
VI	[1] 5,000

[1] A minimum of—

(2) For monitoring a right-of-way grant or temporary use permit:

Category	Fee
I	$25
II	50
II	75
IV	150
V	250
VI	([1])

[1] As required.

(d) Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits pertaining to the Trans-Alaska Pipeline System shall be made by payment of such sums as the Secretary determines to be required to reimburse the Department of the Interior for the actual costs of these services. In processing applications and administering right-of-way grants and emporary use permits relating to the rans-Alaska Pipeline System, the Deartment of the Interior shall avoid nnecessary employment of personnel nd needless expenditure of funds as etermined by the Secretary. Reimursement of costs shall be made for ch quarter ending on the last day of arch, June, September and Decemr. On or before the 16th day after e close of each quarter, the authord officer shall submit to the permit- a written statement of costs inrred during that quarter which are mbursable.

FR 1309, Jan. 10, 1985 and 51 FR 31765, t. 5, 1986]

§ 2883.1-2 Rental payments.

Holders of right-of-way grants and temporary use permits issued under this part shall make rental payments in accordance with § 2803.1-2 of this title, except that the provisions of § 2803.1-2(b) of this title shall not apply.

[47 FR 38807, Sept. 2, 1982, as amended at 52 FR 25821, July 8, 1987]

§ 2883.1-3 Bonding.

The authorized officer may require a holder of a right-of-way grant or temporary use permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the right-of-way grant and temporary use permits and applicable laws and regulations.

§ 2883.1-4 Liability.

(a) Except as provided in paragraph (f) of this section holders shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standard shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed $1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction, in accordance with the law of the jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the use and occupancy of right-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damage or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by a holder.

(h) Except as otherwise expressly provided in this section, the provisions in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, they shall be jointly and severally liable under this section.

§ 2883.1-5 Common carriers.

(a) Pipelines shall be constructe operated, and maintained as commo carriers. The owners or operators o pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(b) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(c) The authorized officer shall require, prior to issuing or renewing a right-of-way grant, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which the authorized officer considers necessary to determine whether a right-of-way grant shall be issued or renewed and the terms and conditions which should be included in the grant. Such information may include, but is not limited to:

(1) Conditions for, and agreements among, owners or operators regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

§ 2883.1-6 Export.

With certain exceptions, domestically produced crude oil transported through a pipeline is subject to the provisions of section 28(u) of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 185), and the Export Administration Act of 1969 as amended (50 U.S.C. 2401), and may not be exported without Presidential and congressional approval.

§ 2883.2 Holder activity.

(a) The actions of holders of right-of-way grants or temporary use permits shall be regulated by the appropriate agency head having jurisdiction over the Federal lands involved, unless other arrangements are agreed to by the authorized officer and agency head.

(b) An applicant shall promptly notify the authorized officer of any changes in its plans, financial condition, or other factors relevant to the application, and shall modify the application promptly to reflect any such changes. If the requirements of this subsection are not complied with in the opinion of the authorized officer, the application may be rejected.

(c) The holder shall at all times keep the authorized officer informed of his or her address, and in the case of a corporation, of the address of its principle place of business and the names and addresses of its principle officers.

(d) Any proposed change in the route of the pipeline or change in the use of Federal lands under the Act will require an amended or new right-of-way grant or temporary use permit from the authorized officer. Any unauthorized activity may be subject to prosecution under applicable laws.

(e) Holders of pipeline right-of-way grants issued before November 16, 1973, must apply under the Act and these regulations for modifications of the route or change in the use of Federal lands in connection with such right-of-way.

(f) The authorized officer may ratify or confirm a right-of-way grant or temporary use permit that was issued under any provision of law if the right-of-way grant or temporary use permit is modified to comply with the provisions of the Act and regulations. Such modifications are subject to the joint approval of the right-of-way holder and the authorized officer.

§ 2883.3 Construction procedures.

(a) Unless otherwise stated in the right-of-way grant or temporary use permit, construction may proceed immediately after delivery to the authorized officer of the applicant's written acceptance of the right-of-way grant or temporary use permit.

(b) If a notice to proceed requirement has been imposed under § 2882.3(m) of this title, the holder shall initiate no construction, occupancy, or use until the authorized officer issues an appropriate notice to proceed.

§ 2883.4 Operation and maintenance.

Prior to the beginning of pipeline operations, the holder shall submit to the authorized officer a certification of construction, verifying that the pipeline system has been constructed and tested in accordance with the terms of the right-of-way grant, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2883.5 Immediate temporary suspension of activities.

(a) If the authorized officer determines that any activity being conducted or authorized by a holder within a right-of-way or temporary use permit area is endangering public health or safety or the environment, he may order the immediate suspension of that activity and immediate remedial action.

(b) The authorized officer may order immediate suspension of an activity irrespective of any action that has been or is being taken by another Federal agency or a State agency.

(c) The authorized officer may give an immediate suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent.

(d) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(e) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(f) The authorized officer may render an order to either grant or deny the request to resume 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

§ 2883.6 Suspension and termination of right-of-way grants and temporary use permits.

If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition or event, the right-of-way grant or temporary use permit shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit.

§ 2883.6-1 Suspension and termination of right-of-way grants.

(a) The authorized officer may institute procedures for suspension or termination of a right-of-way grant if it is determined that:

(1) The holder has failed to comply with any term, condition, or stipulation of the right-of-way grant or applicable laws or regulations.

(b) The holder has deliberately failed to use the right-of-way for the purpose for which it was granted or renewed for a continuous 2-year period.

(c) Where the authorized officer determines that a situation under § 2883.6 or § 2883.6-1 of this title exists in connection with a right-of-way grant, he or she shall give written notice to the holder, and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR part 4. The authorized officer shall suspend or terminate the right-of-way grant if the Administrative Law Judge determines that grounds for suspension or termination exists and that such action is justified.

[44 FR 58129, Oct. 9, 1979, as amended at 47 FR 38807, Sept. 2, 1982]

§ 2883.6-2 Suspension and termination of temporary permits.

(a) The authorized officer may institute procedures for suspension or termination of a temporary use permit if it is determined that:

(1) The holder has failed to comply with any term, condition or stipulation of the permit or applicable laws or regulations; or

(2) The holder has deliberately failed to use the temporary use permit area for the purpose for which it was issued or renewed;

(b) Where the authorized officer determines that a situation under § 2883.6 of this subpart or this section exists, he or she shall give written notice to the holder. The holder may file a written request for review of the notice to the next higher level of authority. The reviewing official shall, within 10 days of or receipt of such a request, arrange for a review of the activities that prompted the suspension or termination notice. The reviewing official shall, within a reasonable time, affirm, modify or cancel the notice and shall provide the holder with a written determination.

(c) A holder may appeal a decision issued under paragraph (b) of this section pursuant to 43 CFR part 4.

§ 2883.7 Change in Federal jurisdiction or disposal of lands.

(a) Where a right-of-way grant or temporary use permit administered under these regulations traverses Federal lands that are transferred to another Federal agency, administration of the right-of-way shall, at the discretion of the authorized officer, be assigned to the acquiring agency unless such assignment would diminish the rights of the holder.

(b) Where a right-of-way grant or temporary use permit traverses Federal lands that are transferred out of Federal ownership, the transfer of the lands shall, at the discretion of the authorized officer, either include an assignment of the right-of-way, or be made subject to the right-of-way or the United States may reserve unto itself the lands encumbered by the right-of-way.

[47 FR 38807, Sept. 2, 1982]

§ 2883.8 Restoration of Federal lands.

Within a reasonable time after termination, revocation or cancellation of a right-of-way grant, the holder shall, unless directed otherwise in writing by the authorized officer, remove such structures and improvements and restore the site to a condition satisfactory to the authorized officer. If the holder fails to remove all such structures and improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

[47 FR 38807, Sept. 2, 1982]

Subpart 2884—Appeals

§ 2884.1 Appeals procedure.

(a) All appeals under this part from any final decision of the authorized officer shall be taken in accordance with art 4 of 43 CFR to the Office of the ecretary, Board of Land Appeals.

(b) All decisions of the authorized fficer under this part shall remain effective pending appeal unless the Secetary rules otherwise. Petitions for e stay of a decision shall be filed with the Office of Hearing and Appeals, Department of the Interior.

[44 FR 58129, Oct. 9, 1979, as amended at 53 FR 17702, May 18, 1988]

Subparts 2885-2886—[Reserved]

Subpart 2887—Over Lands Subject to Mineral Lease

§ 2887.0-3 Authority.

Section 29 of the Act of February 25, 1920, as amended (30 U.S.C. 186), provides in part that any permit, lease, occupation or use permitted under that Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through or in the lands leased, occupied or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes. Application for such easements or rights-of-way shall be filed in accordance with applicable laws and regulations.

Group 2900—Use; Leases and Permits

NOTE: The information collection requirements contained in part 2920 of Group 2900 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004—0009. The information is being collected to permit the authorized officer to determine if use of the public lands should be granted for various authorized uses under a lease, permit or easement. The information will be used to make this determination. A response is required to obtain a benefit.

(See 48 FR 40889, Sept. 12, 1983)

PART 2910—LEASES

Subpart 2911—Airport

Sec.
2911.0-1 Purpose.
2911.0-3 Authority.
2911.0-5 Definitions.
2911.0-8 Lands available for leasing.

Sec.
2911.1 Terms and conditions.
2911.2 Procedures.
2911.2-1 Preapplication activity.
2911.2-2 Applications.
2911.2-3 Report by Administrator; Notice of Realty Action.
2911.2-4 Execution of lease.

Subpart 2912—Recreation and Public Purposes Act

2912.0-7 Cross reference.
2912.1 Nature of interest.
2912.1-1 Terms and conditions of lease.
2912.2 Renewal of leases.
2912.3 Substitution of a new lease.

Subpart 2916—Alaska Fur Farm

2916.0-3 Authority.
2916.0-6 Policy.
2916.0-8 Area subject to lease.
2916.1 Terms and conditions.
2916.1-1 Commencement of operations; stocking lands.
2916.1-2 Rights reserved; protection of improvements and roads.
2916.2 Procedures.
2916.2-1 Applications.
2916.2-2 Assignments and subleases.
2916.2-3 Renewal of leases.
2916.2-4 Termination of lease; cancellation.

AUTHORITY: 49 U.S.C. App., 211-213, 43 U.S.C. 869 *et seq.* 48 U.S.C 360, 361, unless otherwise noted.

Subpart 2911—Airport

AUTHORITY: 49 U.S.C. 211; 43 U.S.C. 1701 *et seq.*

SOURCE: 51 FR 40809, Nov. 10, 1986, unless otherwise noted.

§ 2911.0-1 Purpose.

This subpart sets forth procedures for issuance of airport leases on the public lands.

§ 2911.0-3 Authority.

The Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211-213), authorizes the Secretary of the Interior to lease for use as a public airport, any contiguous unreserved and unappropriated public lands not to exceed 2,560 acres in area.

§ 2911.0-5 Definitions.

As used in this subpart, the term:

(a) *Act* means the Act of May 24, 1928, as amended (49 U.S.C. Appendix, 211-213).

(b) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(c) *Administrator* means the Administrator of the Federal Aviation Administration.

(d) *Applicant* means any individual who is a citizen of the United States; a group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; or a State or political subdivisions or instrumentality thereof, including counties and municipalities; who submits an application for an airport lease under this subpart.

(e) *Public airport* means an airport open to use by all persons without prior permission of the airport lessee or operator, and without restrictions within the physical capacities of its available facilities.

§ 2911.0-8 Lands available for leasing.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act, subject to valid existing rights under the public land laws.

§ 2911.1 Terms and conditions.

(a) The lessee shall, within 1 year from the date of issuance of the lease, equip the airport as required by the Administrator and file a report thereof in the Bureau of Land Management District office having jurisdiction over the lands under lease.

(b) At any time during the term of the lease, the Administrator may have an inspection made of the airport, and if the the airport does not comply with the ratings set by the Federal Aviation Administration, the Administrator shall submit a written statement describing the deficiencies to the Bureau of Land Management District office having jurisdiction over the lands under lease for appropriate action.

(c) The authorized officer may cancel, in whole or in part, a lease issued under the Act for any of the following reasons: Lessee failure to use the leased premises or any part thereof for a period of at least 6 months; use of the property or any part thereof for a purpose other than the authorized use; failure to pay the annual rental in full on or before the date due; failure to maintain the premises according to the ratings set by the Federal Aviation Administration; failure to comply with the regulations in this part or the terms of the lease.

(d) Leases under the Act shall be for a period not to exceed 20 years and may be renewed for like periods.

(e) Annual rental for leases to any citizen of the United States, any group or association of citizens, or any corporation organized under the laws of the United States or any State shall be at appraised fair market rental, with a minimum annual rental payment of $100. State or political subdivisions thereof, including counties and municipalities, shall pay to the lessor an annual rental calculated at the appraised fair market value of the rental of the property less 50%, with a minimum annual rental payment of $100. In fixing the rentals, consideration shall be given to all pertinent facts and circumstances, including use of the airport by government departments and agencies. Rental of each lease shall be reconsidered and revised at 5-year intervals to reflect current appraised fair market value. The first annual rental payment shall be made prior to issuance of the lease. All subsequent payments shall be paid on or before the anniversary date of issuance of the lease.

(f) The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and, with the approval of the authorized officer, such departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable by the heads of such departments and agencies. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airport.

(g) The lessee shall submit to the Administrator for approval regulations governing operations of the airport.

§ 2911.2 Procedures.

§ 2911.2-1 Preapplication activity.

Persons seeking to lease public lands under this subpart shall first consult with the authorized officer in the District or Resource Area Office in which the lands are located. Such consultation is necessary to determine land availability and conformity of proposed use with approved land use plans, explain associated statutory and regulatory requirements, familiarize the potential applicant with respective management responsibilities, set forth the application processing procedures for the proposed action, and identify potential conflicts. Upon completion of the consultation, persons seeking to lease public lands for a public airport may submit an application for consideration by the authorized officer.

§ 2911.2-2 Applications.

(a) Each application shall clearly describe the lands applied for by legal subdivisions and/or by metes and bounds and contain a plan of development and use signed by the applicant or by a duly authorized agent or officer of the applicant. When required by the authorized officer, the application shall include copies of the appropriate State, county, or municipal airport licenses or permits, as well as such additional States and local clearances as may be required.

(b) Each application shall be accompanied by a non-refundable filing fee of $100. Each applicant shall also be required to pay the cost of publication of a Notice of Reality Action in the FEDERAL REGISTER and a newspaper of general circulation in the area in which the lands are located.

(c) If approval of an application results in cancellation of a grazing permit of lease or a reduction in grazing acreage, the provisions of § 4110.4-2 of this title shall apply.

§ 2911.2-3 Report by Administrator: Notice of Realty Action.

(a) Upon receipt of the application, the authorized officer shall send 1 copy to the Administrator for a determination concerning what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that agency. After receiving the report of the Administrator, and before making a determination to issue a lease, the authorized officer shall publish a Notice of Realty Action in the FEDERAL REGISTER and in a newspaper of general circulation in the area of the lands to be leased. The notice shall provide 45 days from the date of publication in the FEDERAL REGISTER for comments by the public. Comments shall be sent to the office issuing the notice. The notice shall not be published until the authorized officer has received the filing fee from the applicant and is satisfied that all statutory and regulatory requirements have been met.

(b) The notice of realty action may segregate the lands or interests in lands to be conveyed to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate either upon issuance of a document of conveyance or 1 year from the date of publication in the FEDERAL REGISTER, whichever occurs first.

[51 FR 40809, Nov. 10, 1986; 51 FR 45986, Dec. 23, 1986]

§ 2911.2-4 Execution of lease.

Upon receipt of the payments required by § 2911.2-2(b) of this title and not less than 45 days following the publications required by § 2911.2-4 of this title, the authorized officer shall make a decision on the application and, if the application is approved, issue the lease.

[51 FR 40809, Nov. 10, 1986; 51 FR 45986, Dec. 23, 1986]

Subpart 2912—Recreation and Public Purposes Act

AUTHORITY: Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.).

SOURCE: 44 FR 43473, July 25, 1979, unless otherwise noted.

§ 2912.0-7 Cross reference.

The general requirements and procedures under the Recreation and Public Purposes Act are contained in part 2740 of this title.

§ 2912.1 Nature of interest.

§ 2912.1-1 Terms and conditions of lease.

(a) The term of leases under the Recreation and Public Purposes Act, hereafter referred to as *the Act*, shall be fixed by the authorized officer but shall not exceed 20 years for nonprofit associations and nonprofit corporations, and 25 years for Federal, State, and local governmental entities. A lease may contain, at the discretion of the authorized officer, a provision giving the lessee the privilege of renewing the lease for a like period.

(b) Leases shall be issued on a form approved by the Director, Bureau of Land Management and shall contain terms and conditions required by law, and public policy, and which the authorized officer considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interest.

(c) Leases shall be terminable by the authorized officer upon failure of the lessee to comply with the terms of the lease, upon a finding, after notice and opportunity for hearing, that all or part of the land is being devoted to a use other than the use authorized by the lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized officer. The specified period of non-use or unauthorized use shall not be less than 2 years nor more than 5 years.

(d) Reasonable annual rentals shall be established by the Secretary of the Interior and shall be payable in advance. Upon notification of the

nount of the yearly rental, a lease
plicant shall be required to pay at
ıst the first year's rental before the
ıse shall be issued. Upon the volun-
ry relinquishment of a lease before
e expiration of its term, any rental
id for the unexpired portion of the
m shall be returned to the lessee
on a proper application for repay-
nt to the extent that the amount
d covers a full lease year or years of
remainder of the term of the origi-
lease. Leases for recreational or
toric-monument purposes to a
te, county or other State or Feder-
nstrumentality or political subdivi-
shall be issued without monetary
sideration.

) Leases are not transferable
ept with the consent of the author-
officer. Transferees shall have all
qualifications of applicants under
Act and shall be subject to all the
ns and conditions of the regula-
s in this part.

A lessee shall not be permitted to
imber from the leased lands with-
prior permission from the author-
officer.

All leases shall reserve to the
ed States all minerals together
the right to mine and remove the
under applicable laws and regu-
ns to be established by the Secre-
of the Interior.

2 Renewal of leases.

ssee with a privilege of renewal
notify the authorized officer at
180 days before the end of the
period that it will exercise the
ge.

Substitution of a new lease.

see may apply for a new lease at
ne. Applications for new leases
e accompanied by consent of
see to cancellation of the exist-
e upon the issuance of the new
nd by three copies of a state-
howing (a) the need for a new
d (b) any changes in the use or
ment of the lands or the terms
ditions of the lease which the
t desires.

Subpart 2916—Alaska Fur Farm

Source: 35 FR 9665, June 13, 1970, unless otherwise noted.

§ 2916.0-3 Authority.

The Act of July 3, 1926 (44 Stat. 821, 48 U.S.C. secs. 360, 361), authorizes the Secretary of the Interior to lease public lands on the mainland of or islands in Alaska, with the exception of the Pribilof Islands, for fur farming, for periods not exceeding ten years.

§ 2916.0-6 Policy.

(a) The authority to lease the public lands in Alaska for fur-farming purposes was granted in order to promote the development of the production of furs in Alaska.

(b) No lease for the purpose of raising beavers will be granted on any area already occupied by a beaver colony nor will any such lease be granted on streams or lakes where the activities of beavers may interfere with the run or spawning of salmon.

(c) In order to offer more people an opportunity to lease lands, and to avoid tying up large areas of land unnecessarily, fur-farming leases on public lands will not be granted for areas greater than are justified by the needs and experience of the applicant.

§ 2916.0-8 Area subject to lease.

(a) *Acreage limitation and exceptions.* (1) On the mainland such leases may be for an area not exceeding 640 acres. A lease may cover an entire island, provided the area thereof does not exceed 30 square miles, and provided the need for such entire island is clearly established. Islands so close together that animals can cross from one to the other and whose combined area does not exceed 30 square miles, will be treated as one island. Islands having an area of more than 30 square miles will be treated as mainland.

(2) Where a lease is granted for an area in excess of 640 acres on an island, the manager may, after notice to the lessee, reduce the area to an amount not less than 640 acres, if he determines that the lessee cannot reasonably use all of the area for which the lease was granted.

(b) *Lands subject to lease.* (1) Vacant, unreserved, and unappropriated public lands are subject to lease.

(2) Except for lands under the jurisdiction of the Fish and Wildlife Service and the National Park Service, public lands withdrawn or reserved for any purpose are subject to lease, if the department or agency having jurisdiction thereof consents to the issuance of the lease.

§ 2916.1 Terms and conditions.

§ 2916.1-1 Commencement of operations; stocking lands.

The lessee shall, within one year from the date of issuance of the lease, commence operations by taking possession of the leased area, and by placing thereon within that period such improvements as may be needed for such operations and as will show good faith, and shall thereafter develop the fur-farming enterprise on the leased area with reasonable diligence. The lessee shall stock the leased area with the minimum of fur-bearing animals required by the lease within the periods specified in the lease.

§ 2916.1-2 Rights reserved; protection of improvements and roads.

Nothing in this part or any lease issued under this part shall interfere with or prevent:

(a) The prospecting, locating, development, entering, leasing, or patenting of mineral resources in the leased area under laws applicable thereto.

(b) The use and disposal of timber or other resources on or in the leased area under applicable laws.

(c) The use and occupation of parts of leased areas for the taking, preparing, manufacturing, or storing of fish or fish products, or the utilization of the lands for purposes of trade or business, to the extent and in the manner provided by law, and as authorized by the State Director.

(d) The acquisition or granting of rights-of-way or easements under applicable laws and regulations.

(e) Hunting and fishing under applicable Federal and State hunting and fishing laws and regulations, but the authorized officer may prohibit or restrict, or he may authorize the lessee to prohibit or restrict hunting or fishing on such parts of the leased area and for such periods as he may determine to be necessary in order to prevent any substantial interference with the purposes for which the lease is issued.

§ 2916.2 Procedures.

§ 2916.2-1 Applications.

(a) *Qualifications of applicants.* Any person who is a citizen of the United States, or any group or association composed of such persons, or any corporation organized under the laws of the United States, or of any State thereof, authorized to conduct business in Alaska may file an application.

(b) *Contents of application.* An application for lease should be filed in duplicate in the proper office. No specific form of application is required, but the application should contain or be accompanied by the following:

(1) Applicant's full name, post office address, the general nature of his present business, and the principal place of business.

(2)(i) A statement of the age and of the citizenship status, whether native-born or naturalized, of the applicant, if an individual, or of each partner or member of a partnership or association. A copartnership or an association applicant shall file a copy of whatever written articles of association its members have executed.

(ii) A corporation shall file a certified copy of its articles of incorporation, evidence that it is authorized to transact business in Alaska, and a copy of the corporate minutes or resolutions authorizing the filing of the application and the execution of the lease.

(3) Description of the land for which the lease is desired, by legal subdivision, section, township, and range, if surveyed, and by metes and bounds, with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public-land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments.

(4) A statement as to the applicant's experience in and knowledge of fur farming.

(5) A statement as to the kind of fur-bearing animals to be raised, and, if foxes, the color type; the number of fur-bearing animals the applicant proposes to have on the leased land within one year from the date of the lease, and whether it is proposed to purchase or trap the stock; and that before commencing operations of any lease which may be issued, the applicant will procure from the appropriate State game agency whatever licenses are required under Alaska law.

(6) A detailed statement of the reasons for the need for any area in excess of 640 acres but not exceeding 30 square miles, when the land applied for is comprised of an island, or islands.

(7) A statement of the nature and results of the investigation made by applicant as to whether the land and climate are suited to raising the kind of animals proposed to be stocked.

(8) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others; and, if so the nature of the use and occupancy and the improvements thereon, if any.

(9) If beavers are to be raised, a statement as to whether a beaver colony exists on the land, and whether salmon streams or lakes are on or adjacent to the land proposed to be leased.

(10) A statement that the applicant is acting solely on his own account and not under any agreement or understanding with another.

(11) The serial numbers of all other applications filed or leases obtained under this act by applicant, or applicant's spouse or business associate, or in which applicant has a direct or indirect interest.

(12) The showing as to hot or medicinal springs required by § 2311.2(a) of this chapter.

(13) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Form of lease; rental and royalty; report of annual operations.* (1) Leases will be issued on a form approved by the Director.

(2) Prior to the issuance of a lease and annually thereafter, the lessee shall pay an advance rental of $5 per annum if the lease embraces 10 acres or less, a rental of $25 per annum if the leased area is more than 10 acres but not more than 640 acres, and a rental of $50 per annum if the leased area exceeds 640 acres.

(3) Within 60 days after the end of each lease year the lessee shall file with the land office a report on a form approved by the Director, in duplicate, showing his operations under the lease and his gross receipts thereunder from the sale of live animals and pelts for the preceding lease year. The lessee shall pay, at the time of filing the report, a royalty of 1 percent of such gross receipts deducting therefrom the amount of the advance rental payment made for such preceding lease year.

§ 2916.2-2 Assignments and subleases.

A proposed assignment on a lease, in whole or in part, or a sublease, must be filed in duplicate with the proper office within 90 days from the date of its execution; must contain all of the terms and conditions agreed upon by the parties thereto; and must be supported by a statement that the assignee or sublessee agrees to be bound by the provisions of the lease. The assignee or sublessee must submit with the assignment or sublease the information or statements required by § 2916.2-1(b) (1), (2), (4), (5), (10), and (11). No assignment or sublease will be recognized unless and until approved by the authorizing officer.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2916.2-3 Renewal of leases.

Upon an application filed in the proper office within 90 days preceding the expiration date of the lease, if it is determined that a renewal lease should be granted, the lessee will be offered such lease by the authorized officer, upon such terms and conditions and for such duration as may be fixed not exceeding 10 years. The filing of an application for renewal does not confer on the lessee any preference right to a renewal. The timely filing of an application will, however authorize the exclusive fur-farming use of the lands by the lessee in accordance with the terms of the prior lease pending final action on the renewal application.

§ 2916.2-4 Termination of lease; cancellation.

(a) *Action by authorized officer.* (1) The authorized officer may terminate a lease at the request of the lessee if the lessee shall make satisfactory showing that such termination will not adversely affect the public interest and that he has paid all charges due the Government thereunder.

(2) A lease may be canceled if the lessee shall fail to comply with any of the provisions of this part or of the lease, or shall devote the lease area primarily to any purpose other than the rearing of fur-bearing animals as authorized. No lease will be canceled until the lessee has been formally notified of such default and such default shall continue for 60 days after service of such notice.

(b) *Removal of improvements and personal property.* (1) Improvements or personal property may not be removed from the lands, except fur-bearing animals disposed of in the regular course of business, unless all moneys due the United States under the lease have been paid. The lessee shall be allowed 90 days from the date of expiration or termination of the lease within which to remove his personal property and such improvements as are not disposed of in the manner set forth in paragraph (b)(2) of this section, which he has a right to remove; if not removed or otherwise disposed of within the said period, such improvements or personal property shall become the property of the United States.

(2) Upon the expiration of the lease or the earlier termination thereof, the authorizing officer may, in his discretion and upon a written petition filed by the lessee within 30 days from the date of such expiration or termination, require the subsequent lease applicant, prior to the execution of a new lease, to agree to compensate the lessee for any improvements of a permanent nature that he may have placed upon the leased area for fur-farming purposes during the period of the lease. If the interested parties are unable to reach an agreement as to the amount of compensation, the amount shall be fixed by the authorizing officer. All such agreements to be effective, must be approved by the authorizing officer. The failure of the subsequent lessee to pay the former lessee in accordance with such agreement will be just cause for cancellation of the lease.

PART 2920—LEASES, PERMITS AND EASEMENTS

Subpart 2920—Leases, Permits and Easements: General Provisions

Sec.
2920.0-1 Purpose.
2920.0-3 Authority.
2920.0-5 Definitions.
2920.0-6 Policy.
2920.1 Uses.
2920.1-1 Authorized use.
2920.1-2 Unauthorized use.
2920.2 Procedures for public-initiated land use proposals.
2920.2-1 Discussion of proposals.
2920.2-2 Minimum impact permits.
2920.2-3 Other land use proposals.
2920.2-4 Proposal content.
2920.2-5 Proposal review.
2920.3 Bureau of Land Management initiated land use proposals.
2920.4 Notice of realty action.
2920.5 Application procedure.
2920.5-1 Filing of applications for land use authorizations.
2920.5-2 Application content.
2920.5-3 Application review.
2920.5-4 Competitive or non-competitive bids.
2920.5-5 Application processing.
2920.6 Reimbursement of costs.
2920.7 Terms and conditions.
2920.8 Fees.
2920.9 Supervision of the land use authorization.
2920.9-1 Construction phase.
2920.9-2 Operation and maintenance.
2920.9-3 Termination and suspension.

AUTHORITY: 43 U.S.C. 1732, 1733 and 1740.

SOURCE: 46 FR 5777, Jan. 19, 1981, unless otherwise noted.

Subpart 2920—Leases, Permits and Easements: General Provisions

§ 2920.0-1 Purpose.

The purpose of the regulations in this part is to establish procedures for the orderly and timely processing of proposals for non-Federal use of the public lands. The procedural and informational requirements set by these regulations vary in relation to the nature of the anticipated use.

§ 2920.0-3 Authority.

Sections 302, 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through leases, permits, and easements.

[52 FR 49115, Dec. 29, 1987]

§ 2920.0-5 Definitions.

As used in this part, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(b) *Easement* means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(c) *Lease* means an authorization to possess and use public lands for a fixed period of time.

(d) *Permit* means a short-term revocable authorization to use public lands for specified purposes.

(e) *Land use proposal* means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(f) *Land use plan* means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(g) *Public lands* means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(h) *Person* means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(i) *Proponent* means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(j) *Applicant* means any person who submits an application for a land use authorization under this part.

(k) *Casual use* means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.

(l) *Land use authorization* means any authorization to use the public lands issued under this part.

(m) *Knowing and willful* means that a violation is *knowingly and willfully* committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty that is required. The terms does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. The term includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

[46 FR 5777, Jan. 19, 1981, as amended at 52 FR 49115, Dec. 29, 1987]

§ 2920.0-6 Policy.

(a) Land use authorizations shall be issued only at fair market value and only for those uses that conform with Bureau of Land Management plans, policy, objectives and resource management programs. Conformance with land use authorizations will be determined through the planning process and procedures provided in part 1600 of this title.

(b) In determining the informational and procedural requirements, the authorized officer will consider the duration of the anticipated use, its impact on the public lands and resources and the investment required by the anticipated use.

§ 2920.1 Uses.

§ 2920.1-1 Authorized use.

Any use not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized under this part. Uses which may be authorized include residential, agricultural, industrial, and commercial, and uses that cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following categories:

(a) Leases shall be used to authorize uses of public lands involving substantial construction, development, or land improvement and the investment of large amounts of capital which are to be amortized over time. A lease conveys a possessory interest and is revocable only in accordance with its terms and the provisions of § 2920.9-3 of this title. Leases shall be issued for a term, determined by the authorized officer, that is consistent with the time required to amortize the capital investment.

(b) Permits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction, or investment, or investment which can be amortized within the term of the permit. A permit conveys no possessory interest. The permit is renewable at the discretion of the authorized officer and may be revoked in accordance with its terms and the provisions of § 2920.9-3 of this title. Permits shall be issued on a form approved by the Director, Bureau of Land Management, that has been filed by the applicant with the appropriate Bureau of Land Management office.

(c) Easements may be used to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land. The term of the easement shall be determined by the authorized officer. An easement granted under this part may be issued only for purposes not authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act.

(d) No land use authorization is required under the regulations in this part for casual use of the public lands.

[52 FR 49115, Dec. 29, 1987]

§ 2920.1-2 Unauthorized use.

(a) Any use, occupancy, or development of the public lands, other than casual use as defined in § 2920.0-5(k) of this title, without authorization under the procedures in § 2920.1-1 of this title, shall be considered a trespass. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified of such trespass and shall be liable to the United States for:

(1) The administrative costs incurred by the United States as a consequence of such trespass; and

(2) The fair market value rental of the lands for the current year and past years of trespass; and

(3) Rehabilitating and stabilizing the lands that were the subject of such trespass, or if the person determined to be in trespass does not rehabilitate and stabilize the lands determined to be in trespass within the period set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(b) In addition, the following penalties may be assessed by the authorized officer for a trespass not timely resolved under paragraph (a) of this section and where the trespass is determined to be:

(1) Nonwillful, twice the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years; or

(2) Knowing and willful, three times the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years.

(c) For any person found to be in trespass on the public lands under this section, the authorized officer may take action under § 2920.9-3 of this title to terminate, revoke, or cancel any land use authorization issued to such person under this part.

(d) Failure to satisfy the liability and penalty requirements imposed under this section for unauthorized use of the public lands may result in denial of:

(1) A use authorization under this part; and

(2) A request to purchase or exhange public lands filed under subarts 2711 and 2201 of this title.

(e) Any person who knowingly and illfully violates the regulations in is part by using the public lands ithout the authorization required by is part, in addition to the civil penales provided for in this part, may be bject to a fine of not more than ,000 or imprisonment of not more an 12 months, or both under subrt 9262 of this title.

(f) Any person adversely affected by decision issued under this section, y appeal that decision under the ovisions of part 4 of this title.

FR 49115, Dec. 29, 1987]

20.2 Procedures for public-initiated land use proposals.

20.2-1 Discussion of proposals.

) *Suggestions by land use propo-* . Any person who seeks to use lic lands may contact the Bureau and Management office having juction over the public lands in tion and discuss the land use pro- . This contact should be made as as possible so that administrative rements and potential conflicts other land uses can be identified.

(b) *Response by the authorized officer.* The authorized officer will discuss with the land use proponent whether the requested land use, suitability or non-suitability of the requested land use based on a preliminary examination of existing land use plans, where available, is or is not in conformance with Bureau of Land Management policies and programs for the lands, local zoning ordinances and any other pertinent information. The authorized officer will discuss administrative requirements for the type of land use authorization which may be granted (lease, permit or easement), including, but not limited to: additional information which may be required; qualifications; cost reimbursement requirements; associated clearances, other permits or licenses which may be required; environmental and management considerations; and special requirements such as competitive bidding and identification of on-the-ground investigations which may be required in order to issue a land use authorization.

§ 2920.2-2 Minimum impact permits.

The authorized officer may, without publication of a notice of realty action, issue a permit for a land use authorization upon a determination that the proposed use is in conformance with Bureau of Land Management plans, policies and programs, local zoning ordinances and any other requirements and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

§ 2920.2-3 Other land use proposals.

(a) A proposal for a land use authorization, including permits not covered by § 2920.2-2 of this title, shall be submitted in writing to the Bureau of Land Management office having jurisdiction over the public lands covered by the proposal.

(b) The submission of a proposal gives no right to use the public lands.

§ 2920.2-4 Proposal content.

(a) Proposals for a land use authorization shall include a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts if any, on the environment, the public or other benefits from the proposed land use, the approximate cost of the proposal, any threat to the public health and safety posed by the proposal and whether the proposal is, in the proponent's opinion, in conformance with Bureau of Land Management plans, programs and policies for the public lands covered by the proposal. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) The proposal shall include the name, legal mailing address and telephone number of the land use proponent.

§ 2920.2-5 Proposal review.

(a) A land use proposal shall, upon submission, be reviewed to determine if the public lands covered by the proposal are appropriate for the proposed land use and if the proposal is otherwise legal.

(b) If the proposal is found to be appropriate for further consideration, the authorized officer shall examine the proposal and make one of the following determinations:

(1) The proposed land use is in conformance with the appropriate land use plan and can be approved;

(2) The proposed land use has not been addressed in an existing land use plan and shall be addressed in accordance with the procedure in part 1600 of this title;

(3) The proposed land use is in an area not covered in an existing land use plan and shall be processed in accordance with the procedure in § 1601.8 of this title; or

(4) The proposed land use is not in conformance with the approved land use plan. This determination may b appealed under 43 CFR 4.400 fo review of the question of conformanc with the land use plan.

(c)(1) If a proposed land use does not meet the requirements of this subpart or is found not to be in conformance with the land use plan, the authorized officer shall so advise the proponent and shall provide a written explanation of the reasons the proposed use does not meet the requirements of this subpart and/or is not in conformance with an existing land use plan.

(2) Where a proposed land use is determined not to be in conformance with an approved land use plan, with the land use plan, the authorized officer may consider the proposal for land use as an application to amend or revise the existing land use plan under part 1600 of this title.

§ 2920.3 Bureau of Land Management initiated land use proposals.

Where, as a result of the land use planning process, the desirability of allowing use of the public lands or providing increased service to the public from such use of the public lands is demonstrated, the authorized officer may identify a use for the public land and notify the public that proposals for utilizing the land through a lease, permit or easement will be considered.

§ 2920.4 Notice of realty action.

(a) A notice of realty action indicating the availability of public lands for non-Federal uses through lease, permit or easement shall be issued, published and sent to parties of interest by the authorized officer, including, but not limited to, adjoining land owners and current or past land users, when a determination has been made that such public lands are available for a particular use either through the submission of a public initiated proposal or through the land use planning process.

(b) The notice shall include the use proposed for the public lands and shall notify the public that applications for a lease, permit or easement shall be considered. The notice shall specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued. A notice of realty action is not a specific action implementing a resource management plan or amendment.

(c) The notice of realty action shall be published once in the FEDERAL REGISTER and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands included in the land use proposal.

(d) An application submitted before a notice of realty action is published shall not be processed and shall be returned to the person who submitted it. Return of an application shall not be subject to appeal or protest.

§ 2920.5 Application procedure.

§ 2920.5-1 Filing of applications for land use authorizations.

(a) Only after publication of a notice of realty action shall an application for a land use authorization be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application.

(b) The filing of an application gives no right to use the public lands.

§ 2920.5-2 Application content.

(a) Applications for land use authorizations shall include a reference to the notice of realty action under which the application is filed and a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts, if any, on the environment, the public or other benefits from the land use, the approximate cost of the proposed land use, any threat to the public health and safety posed by the proposed use and whether the proposed use is, in the opinion of the applicant, in conformance with the Bureau of Land Management plans, programs and policies for the public lands covered by the proposed use. The description shall include, but not be limited to:

(1) Details of the proposed uses and ctivities;

(2) A description of all facilities for hich authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) *Additional information:*

(1) After review of the project description, the authorized officer may require the applicant(s) to fund or to perform additional studies or submit additional environmental data, or both, so as to enable the Bureau of Land Management to prepare an environmental analysis in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470); The Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*); Executive Order 11593, "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921); "Procedures for the Protection of Historic and Cultural Properties" (36 CFR part 300); and other laws and regulations as applicable.

(2) An application for the use of public lands may require additional private, State, local or other Federal agency licenses, permits, easements, certificates or other approval documents. The authorized officer may require the applicant to furnish such documents, or proof of application for such documents, as part of the application.

(3) The authorized officer may require evidence that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain and terminate the authorized land use.

(c) The application shall include the name and legal mailing address of the applicant.

(d) *Business Associations.* If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(e) *Federal departments and agencies.* Federal departments and agencies are not qualified to hold land use authorizations under this authority.

(f) If any of the information required in this section has already been submitted as part of a land use proposal submitted under § 2920.2 of this title, the application need only refer to that proposal by filing date, office and case number. The applicant shall certify that there have been no changes in any of the information.

§ 2920.5-3 Application review.

Every application shall be reviewed to determine if it conforms to the notice of realty action. If the application does not meet the requirements of this subpart, the application may be denied, and the applicant shall be so advised in writing, with an explanation.

§ 2920.5-4 Competitive or non-competitive bids.

(a) *Competitive.* Land use authorizations may be offered on a competitive basis if, in the judgment of the authorized officer, a competitive interest exists or if no equities, such as prior use of the lands, warrant non-competitive land use authorization. Land use authorizations shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offered. A bid at less than fair market value shall not be considered. Each bidder shall submit information required by the notice of realty action.

(b) *Non-competitive.* Land use authorizations may be offered on a negotiated, non-competitive basis, when, in the judgement of the authorized officer equities, such as prior use of the lands, exist, no competitive interest exists or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept. The non-competitive bid shall not be for less than fair market value.

§ 2920.5-5 Application processing.

(a) After review of applications filed, the authorized officer shall select one application for further processing in accordance with the notice of realty action. The authorized officer shall provide public notice of the selection of an applicant and notify the selected applicant, in writing, of the selection. All other applications shall be rejected and returned to the applicants.

(b) The selected land use applicant shall submit any additional information that the authorized officer considers necessary to process the land use authorization.

§ 2920.6 Reimbursement of costs.

(a) When two or more applications are submitted for a land use authorization, each applicant shall be liable for the identifiable costs of processing his (or her) application. Where the costs of processing two or more applications cannot be readily identified with particular applications, all applicants shall be liable for such costs, to be divided equally among them.

(b) The selected land use applicant shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 *et seq.*). The reimbursement of costs shall be in accordance with the provisions of § 2803.1-1 of this title, except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.

(c) The authorized officer may, before beginning any processing of a land use authorization application, require payment, as may be needed, to cover the estimated costs of processing the application. Before granting a land use authorization, the authorized officer shall assess and collect the actual costs of processing after furnishing the applicant with a statement of costs. This payment shall be determined in accordance with the provisions of § 2803 of this title.

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is reached

n the authorization is responsible for
l costs incurred by the United States
processing the application up to the
ay that the authorized officer re-
eives notice of the withdrawal and for
sts subsequently incurred by the
nited States in terminating the pro-
osed land use authorization process.
eimbursement of such costs shall be
aid within 30 days of receipt of notice
om the authorized officer of the
nount due.

(e) Advance payments based on a
hedule of rates developed by the au-
orized officer, are required for moni-
ring of operations and maintenance
uring the term of the land use au-
orization, which amount shall be
id simultaneously with the rental
yment required by § 2920.8(a) of
is title.

(f) The selected applicant shall,
efore a land use authorization is
sued, submit a payment based on a
hedule of rates developed by the Di-
ctor, Bureau of Land Management,
r monitoring rehabilitation or resto-
tion of the lands upon expiration of
e land use authorization.

(g) If payment, as required by para-
aphs (b), (d) and (e) of this section,
ceeds actual costs to the United
ates, refund may be made by the au-
orized officer from applicable funds
der authority of 43 U.S.C. 1734, or
e authorized officer may adjust the
xt billing to reflect the overpay-
ent. Neither an applicant nor a
lder of land use authorization shall
t off or otherwise deduct any debt
e to or any sum claimed to be owed
em by the United States without
e prior written approval of the au-
orized officer.

h) The authorized officer shall, on
quest, give a selected applicant an
imate, based on the best available
t information, of the costs, which
y be incurred by the United States
processing the proposed land use
horization. However, reimburse-
nt shall not be limited to the esti-
e of the authorized officer if
ual costs exceed the projected esti-
e.

When through partnership, joint
ure or other business arrange-
t, more than one person, partner-
, corporation, association or other
entity jointly make application for a land use authorization, each such party shall be jointly and severally liable for the costs under this section.

(j) Requests for modification of or addition to the land use authorization or reconstruction or relocation of any authorized facilities shall be treated as a new application for cost recovery purposes and are subject to the cost requirements of this section.

§ 2920.7 Terms and conditions.

(a) In all land use authorizations the United States reserves the right to use the public lands or to authorize the use of the public lands by the general public in any way compatible or consistent with the authorized land use and such reservations shall be included as a part of all land use authorizations. Authorized representatives of the Department of the Interior, other Federal agencies and State and local law enforcement personnel shall at all times have the right to enter the premises on official business. Holders shall not close or otherwise obstruct the use of roads or trails commonly in public use.

(b) Each land use authorization shall contain terms and conditions which shall:

(1) Carry out the purposes of applicable law and regulations issued thereunder;

(2) Minimize damage to scenic, cultural and aesthetic values, fish and wildlife habitat and otherwise protect the environment;

(3) Require compliance with air and water quality standards established pursuant to applicable Federal or State law; and

(4) Require compliance with State standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.

(c) Land use authorizations shall also contain such other terms and conditions as the authorized officer considers necessary to:

(1) Protect Federal property and economic interests;

(2) Manage efficiently the public lands which are subject to the use or adjacent to or occupied by such use;

(3) Protect lives and property;

(4) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife and other biotic resources of the area for subsistence purposes;

(5) Require the use to be located in an area which shall cause least damage to the environment, taking into consideration feasibility and other relevant factors; and

(6) Otherwise protect the public interest.

(d) A holder shall be required to secure authorization under applicable law to pay in advance the fair market value, as determined by the authorized officer, of any mineral, vegetative materials (including timber) to be cut, removed, used or destroyed on public lands.

(e) A holder shall not use the public lands for any purposes other than those specified in the land use authorization without the approval of the authorized officer.

(f) Liability provisions:

(1) Holders of a land use authorization and all owners of any interest in, and all affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay the United States the full value for all injuries or damage to public lands or other property of the United States caused by the holder or by its employees, agents or servants, or by a contractor, its employees, agents or servants, except holders shall be held to standards of strict liability where the Secretary of the Interior determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to public lands or other property of the United States. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of the United States.

(2) Holders of a land use authorization and all owners of any interest in, and affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay third parties the full value of all injuries or damage to life, person o property caused by the holder, its employees, agents or servants or by a contractor, its employees, agents or servants.

(3) Holders of a land use authorization shall indemnify or hold harmless the United States against any liability for damages to life, person or property arising from the authorized occupancy or use of the public lands under the land use authorization. Where a land use authorization is issued to a State or local government or any agency or instrumentality thereof, which has no legal power to assume such liability with respect to damages caused by it to lands or property, such State or local government or agency in lieu thereof shall be required to repair all damages.

(g) The authorized officer may require a bond or other security satisfactory to him/her to insure the fulfillment of the terms and conditions of the land use authorization.

(h) Any land use authorization existing on the effective date of this regulation is not affected by this regulation and shall continue to be administered under the statutory authority under which it was issued. However, by filing a proposal for amendment or renewal, the holder of a land use authorization shall be considered to have agreed to convert the entire authorization to the current statutory authority and the regulations in effect at the time of approval of the amendment or renewal.

(i) The holder of a land use authorization who has complied with the provisions thereof, shall, upon the filing of a request for renewal, be the preferred user for a new land use authorization provided that the public lands are not needed for another use. Renewal, if granted, shall be subject to new terms and conditions. If so specified in the terms of a permit, the permit may be automatically renewable upon payment of the annual rental unless the authorized officer notifies the permittee within 60 days of the expiration date of the permit that the permit shall not be renewed.

(j) Land use authorizations may be transferred in whole or in part but only under the following conditions:

(1) The transferee shall comply with the provisions of § 2920.2-3 of this title;

(2) The authorized officer may modify the terms and conditions of the land use authorization and the transferee shall agree, in writing, to comply with and be bound by the terms and conditions of the authorization as modified; and

(3) Transfers shall not take effect until approved by the authorized officer.

(k) If public lands included in a lease or easement are to be disposed of, the conveyance shall be made subject to the lease or easement. Permits shall be revoked prior to disposal of the public lands.

§ 2920.8 Fees.

(a) *Rental.* (1) Holders of a land use authorization shall pay annually or otherwise as determined by the authorized officer, in advance, a rental as determined by the authorized officer. The rental shall be based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding. In no case shall the rental be less than fair market value.

(2) Rental fees for leases and easements may be adjusted every 5 years or earlier, as determined by the authorized officer, to reflect current fair market value.

(3) The rental fees required by this section are payable when due, and a late charge of 1 percent per month of the unpaid amount or $15 per month, whichever is greater, shall be assessed if subsequent billings are required. Failure to pay the rental fee in a timely manner is cause for termination of the land use authorization.

(b) *Processing fee.* Each request for renewal, transfer or assignment of a lease or easement shall be accompanied by a non-refundable processing fee of $25. The authorized officer may waive or reduce this fee for requests for permit renewals which can be processed with a minimal amount of work.

§ 2920.9 Supervision of the land use authorization.

§ 2920.9-1 Construction phase.

(a) Unless otherwise stated in the land use authorization, construction may proceed immediately upon receipt and acceptance of the land use authorization by the selected applicant.

(b) Where an authorization to use public lands provides that no construction shall occur until specific permission to begin construction is granted, no construction shall occur until an appropriate Notice to Proceed has been issued by the authorized officer, following the submission and approval of required plans or documents.

(c) The authorized officer shall inspect and monitor construction as necessary, to assure compliance with approved plans and protection of the resources, the environment and the public health, safety and welfare.

(d) The holder of a land use authorization may be required to designate a field representative who can accept and act on guidance and instructions from the authorized officer.

(e) The holder of a land use authorization may be required to provide proof of construction to the approved plan and required standards. Thereafter, operation of the authorized facilities may begin.

§ 2920.9-2 Operation and maintenance.

The authorized officer shall inspect and monitor the operation and maintenance of the land use authorization area, its facilities and improvements to assure compliance with the plan of management and protection of the resources, the environment and the public health, safety and welfare, and the holder of the land use authorization shall take corrective action as required by the authorized officer.

§ 2920.9-3 Termination and suspension.

(a) Land use authorizations may be terminated under the following circumstances:

(1) If a land use authorization provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the land use authorization shall thereupon automati-

cally terminate by operation of law upon the occurrence of such event.

(2) Noncompliance with applicable law, regulations or terms and conditions of the land use authorization.

(3) Failure of the holder to use the land use authorization for the purpose for which it was authorized. Failure to construct or nonuse for any continuous 2-year period shall constitute a presumption of abandonment and termination.

(4) Mutual agreement that the land use authorization should be terminated.

(5) Nonpayment of rent for 2 consecutive months, following notice of payment due.

(6) So that the public lands covered by the permit can be disposed of or used for any other purpose.

(b)(1) Upon determination that there is noncompliance with the terms and conditions of a land use authorization which adversely affects the public health, safety or welfare or the environment, the authorized officer shall issue an immediate temporary suspension.

(2) The authorized officer may give an immediate temporary susension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. The authorized officer may also take such action considered necessary to require correction of such defects prior to an administrative proceeding.

(3) The authorized officer may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal agency or a State agency.

(4) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(5) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(6) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

(c) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a land use authorization, the authorized officer shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to correct any noncompliance.

(2) After due notice of termination or suspension to the holder of a land use authorization, if noncompliance still exists after a reasonable time, the authorized officer shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR 4.420-4.439. The authorized officer shall suspend or revoke the land use authorization if the Administrative Law Judge determines that grounds for suspension or revocation exists and that such action is justified.

(3) The authorized officer shall terminate a suspension order when the authorized officer determines that the violation causing such suspension has been rectified.

(d) Upon termination, revocation or cancellation of a land use authorization, the holder shall remove all structures and improvements except those owned by the United States within 60 days of the notice of termination, revocation or cancellation and shall restore the site to its pre-use condition, unless otherwise agreed upon in writing or in the land use authorization. If the holder fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that shall not relieve the holder of liability for the cost of their removal and restoration of the site.

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

Group 3000—Minerals Management

NOTE: The information collection requirements contained in part 3000 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0145. The information is being collected to allow the authorized officer to determine if the applicant applying to engage in exploratory activity on the public lands is qualified to engage in that activity. This information will be used in making that determination. The obligation to respond is required to obtain a benefit.

[See 48 FR 33659, July 22, 1983, as amended at 53 FR 17375, May 16, 1988]

PART 3000—MINERALS MANAGEMENT: GENERAL

Subpart 3000—General

Sec.

3000.0-5 Definitions.
3000.1 Nondiscrimination.
3000.2 False statements.
3000.3 Unlawful interests.
3000.4 Appeals.
3000.5 Limitations on time to institute suit to contest a decision of the Secretary.
3000.6 Filing of documents.
3000.7 Multiple development.
3000.8 Management of Federal minerals from reserved mineral estates.
3000.9 Enforcement.

AUTHORITY: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508), and the Attorney General's Opinion of Apr. 2, 1941 (40 Op. Atty. Gen. 41).

SOURCE: 48 FR 33659, July 22, 1983, unless otherwise noted.

Subpart 3000—General

§ 3000.0-5 Definitions.

As used in Groups 3000 and 3100 of this title, the term:

(a) *Gas* means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperatures and pressure conditions.

(b) *Oil* means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons).

(c) *Secretary* means the Secretary of the Interior.

(d) *Director* means the Director of the Bureau of Land Management.

(e) *Authorized officer* means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3000 and 3100.

(f) *Proper BLM office* means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Groups 3000 and 3100, except that all oil and gas lease offers, and assignments or transfers for lands in Alaska shall be filed in the Alaska State Office, Anchorage, Alaska.

(See § 1821-2-1 of this title for office location and area of jurisdiction of Bureau of Land Management offices.)

(g) *Public domain lands* means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws and other lands specifically identified by the Congress as part of the public domain.

(h) *Acquired lands* means lands which the United States obtained by deed through purchase or gift, or through condemnation proceedings, including lands previously disposed of under the public land laws including the mining laws.

(i) *Anniversary date* means the same day and month in succeeding years as that on which the lease became effective.

(j) *Act* means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

(k) *Party in interest* means a party who is or will be vested with any interest under the lease as defined in paragraph (l) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest;

(l) *Interest* means ownership in a lease or prospective lease of all or a portion of the record title, working interest, operating rights, overriding royalty, payments out of production, carried interests, net profit share or similar instrument for participation in the benefit derived from a lease. An *interest* may be created by direct or indirect ownership, including options. *Interest* does not mean stock ownership, stockholding or stock control in an application, offer, competitive bid or lease, except for purposes of acreage limitations in § 3101.2 of this title and qualifications of lessees in subpart 3102 of this title.

(m) *Surface managing agency* means any Federal agency outside of the Department of the Interior with jurisdiction over the surface overlying federally-owned minerals.

(n) *Service* means the Minerals Management Service.

(o) *Bureau* means the Bureau of Land Management.

[48 FR 33659, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 17351, May 16, 1988; 53 FR 22835, June 17, 1988]

§ 3000.1 Nondiscrimination.

Any person acquiring a lease under this chapter shall comply fully with the equal opportunity provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations and relevant orders of the Secretary of Labor (41 CFR part 60 and 43 CFR part 17).

§ 3000.2 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

§ 3000.3 Unlawful interests.

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in 43 CFR part 20, shall be entitled to acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department—see 43 CFR part 20; Member of Congress—see R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431-433.)

§ 3000.4 Appeals.

Except as provided in §§ 3101.7-3(b), 3120.1-3, 3165.4, and 3427.2 of this title, any party adversely affected by a decision of the authorized officer made pursuant to the provisions of Group 3000 or Group 3100 of this title shall have a right of appeal pursuant to part 4 of this title.

[53 FR 22835, June 17, 1988]

§ 3000.5 Limitations on time to institute suit to contest a decision of the Secretary.

No action contesting a decision of the Secretary involving any oil or gas lease, offer or application shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3000.6 Filing of documents.

All necessary documents shall be filed in the proper BLM office. A document shall be considered filed when it is received in the proper BLM office during regular business hours (see § 1821.2 of this title).

§ 3000.7 Multiple development.

The granting of a permit or lease for the prospecting, development or production of deposits of any one mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States.

§ 3000.8 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of the use of such minerals shall be accomplished under the regulations of Groups 3000 and 3100 of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

[53 FR 17351, May 16, 1988]

§ 3000.9 Enforcement.

Provisions of section 41 of the Act shall be enforced by the United States Department of Justice.

[53 FR 22835, June 17, 1988]

Group 3100—Oil and Gas Leasing

NOTE: The information collection requirements contained in parts 3100, 3110, 3120, 3130, 3140, 3150, and 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0034, 1004-0065, 1004-0067, 1004-0074, 1004-0132, 1004-0134, 1004-0135, 1004-0136, 1004-0137, 1004-0138, and 1004-0145. The information is being collected to allow the authorized officer to determine if an applicant to lease, explore for or develop Federal oil and gas is qualified to hold such lease. This information will be used in making that determination. The obligation to respond is required to obtain a benefit.

(See 48 FR 33661, July 22, 1983, as amended at 48 FR 40889, Sept. 12, 1983; 53 FR 17375, May 16, 1988; 53 FR 31959, Aug. 22, 1988)

PART 3100—OIL AND GAS LEASING

Subpart 3100—Oil and Gas Leasing: General

Sec.

3100.0-3 Authority.
3100.0-5 Definitions.
3100.1 Helium.
3100.2 Drainage.
3100.2-1 Compensation for drainage.
3100.2-2 Drilling and production or payment of compensatory royalty.
3100.3 Options.
3100.3-1 Enforceability.
3100.3-2 Effect of option on acreage.
3100.3-3 Option statements.

Subpart 3101—Issuance of Leases

3101.1 Lease terms and conditions.
3101.1-1 Lease form.
3101.1-2 Surface use rights.
3101.1-3 Stipulations and information notices.
3101.1-4 Modification or waiver of lease terms and stipulations.
3101.2 Acreage limitations.
3101.2-1 Public domain lands.
3101.2-2 Acquired lands.
3101.2-3 Excepted acreage.
3101.2-4 Excess acreage.
3101.2-5 Computation.
3101.2-6 Showing required.
3101.3 Leases within unit areas.
3101.3-1 Joinder evidence required.
3101.3-2 Separate leases to issue.
3101.4 Lands covered by application to close lands to mineral leasing.
3101.5 National Wildlife Refuge System lands.
3101.5-1 Wildlife refuge lands.
3101.5-2 Coordination lands.
3101.5-3 Alaska wildlife areas.
3101.5-4 Stipulations.
3101.6 Recreation and public purposes lands.
3101.7 Federal lands administered by an agency outside the Department of the Interior.
3101.7-1 General requirements.
3101.7-2 Action by the Bureau of Land Management.
3101.7-3 Appeals.
3101.8 State's or charitable organization's ownership of surface overlying Federally-owned minerals.

Subpart 3102—Qualifications of Lessees

3102.1 Who may hold leases.
3102.2 Aliens.
3102.3 Minors.
3102.4 Signature.
3102.5 Compliance, certification of compliance and evidence.

Sec.
3102.5-1 Compliance.
3102.5-2 Certification of compliance.
3102.5-3 Evidence of compliance.

Subpart 3103—Fees, Rentals and Royalty

3103.1 Payments.
3103.1-1 Form of remittance.
3103.1-2 Where submitted.
3103.2 Rentals.
3103.2-1 Rental requirements.
3103.2-2 Annual rental payments.
3103.3 Royalties.
3103.3-1 Royalty on production.
3103.3-2 Minimum royalties.
3103.4 Promotion of development.
3103.4-1 Waiver, suspension or reduction of rental, royalty or minimum royalty.
3103.4-2 Suspension of operations and/or production.

Subpart 3104—Bonds

3104.1 Bond obligations.
3104.2 Lease bond.
3104.3 Statewide and nationwide bonds.
3104.4 Unit operator's bond.
3104.5 Increased amount of bonds.
3104.6 Where filed and number of copies.
3104.7 Default.
3104.8 Termination of period of liability.

Subpart 3105—Cooperative Conservation Provisions

3105.1 Cooperative or unit agreement.
3105.2 Communitization or drilling agreements.
3105.2-1 Where filed.
3105.2-2 Purpose.
3105.2-3 Requirements.
3105.3 Operating, drilling or development contracts.
3105.3-1 Where filed.
3105.3-2 Purpose.
3105.3-3 Requirements.
3105.4 Combination for joint operations or for transportation of oil.
3105.4-1 Where filed.
3105.4-2 Purpose.
3105.4-3 Requirements.
3105.4-4 Rights-of-way.
3105.5 Subsurface storage of oil and gas.
3105.5-1 Where filed.
3105.5-2 Purpose.
3105.5-3 Requirements.
3105.5-4 Extension of lease term.
3105.6 Consolidation of leases.

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

3106.1 Transfers, general.
3106.2 Qualifications of transferees.
3106.3 Filing fees.
3106.4 Forms.
Sec.
3106.4-1 Transfers of record title and of operating rights (subleases).
3106.4-2 Transfers of other interests, including royalty interests and production payments.
3106.4-3 Mass transfers.
3106.5 Description of lands.
3106.6 Bonds.
3106.6-1 Lease bond.
3106.6-2 Statewide/nationwide bond.
3106.7 Approval of transfer.
3106.7-1 Failure to qualify.
3106.7-2 Continuing responsibility
3106.7-3 Lease account status.
3106.7-4 Effective date of transfer.
3106.7-5 Effect of transfer.
3106.8 Other types of transfers.
3106.8-1 Heirs and devisees.
3106.8-2 Change of name.
3106.8-3 Corporate merger.

Subpart 3107—Continuation, Extension or Renewal

3107.1 Extension by drilling.
3107.2 Production.
3107.2-1 Continuation by production.
3107.2-2 Cessation of production.
3107.2-3 Leases capable of production.
3107.3 Extension for terms of cooperative or unit plan.
3107.3-1 Leases committed to plan.
3107.3-2 Segregation of leases committed in part.
3107.3-3 20-year lease or any renewal thereof.
3107.4 Extension by elimination.
3107.5 Extension of leases segregated by assignment.
3107.5-1 Extension after discovery on other segregated portions.
3107.5-2 Undeveloped parts of leases in their extended term.
3107.5-3 Undeveloped parts of producing leases.
3107.6 Extension of reinstated leases.
3107.7 Exchange leases: 20-year term.
3107.8 Renewal leases.
3107.8-1 Requirements.
3107.8-2 Application.
3107.8-3 Approval.
3107.9 Other types.
3107.9-1 Payment of compensatory royalty.
3107.9-2 Subsurface storage of oil and gas.

Subpart 3108—Relinquishment, Termination, Cancellation

3108.1 Relinquishments.
3108.2 Termination by operation of law and reinstatement.
3108.2-1 Automatic termination.

Sec.

3108.2-2 Reinstatement at existing rental and royalty rates: Class I reinstatements.
3108.2-3 Reinstatement at higher rental and royalty rates: Class II reinstatements.
3108.2-4 Conversion of unpatented oil placer mining claims: Class III reinstatements.
3108.3 Cancellation.
3108.4 Bona fide purchasers.
3108.5 Waiver or suspension of lease rights.

Subpart 3109—Leasing Under Special Acts

3109.1 Rights-of-way.
3109.1-1 Generally.
3109.1-2 Application.
3109.1-3 Notice.
3109.1-4 Award of lease or compensatory royalty agreement.
3109.1-5 Compensatory royalty agreement or lease.
3109.2 Units of the National Park System.
3109.2-1 Authority to lease. [Reserved]
3109.2-2 Area subject to lease. [Reserved]
3109.3 Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

Authority: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301-306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), and the Attorney General's Opinion of Apr. 2, 1941 (40 Op. Atty. Gen. 41).

Source: 48 FR 33662, July 22, 1983, unless otherwise noted.

Subpart 3100—Onshore Oil and Gas Leasing: General

§ 3100.0-3 Authority.

(a) *Public domain.* (1) Oil and gas in public domain lands and lands returned to the public domain under section 2370 of this title are subject to lease under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), by acts, including, but not limited to, section 1009 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148).

(2) *Exceptions.* (i) Units of the National Park System, including lands withdrawn by section 206 of the Alaska National Interest Lands Conservation Act, except as provided in paragraph (g)(4) of this section;

(ii) Indian reservations;

(iii) Incorporated cities, towns and villages;

(iv) Naval petroleum and oil shale reserves and the National Petroleum Reserve—Alaska.

(v) Lands north of 68 degrees north latitude and east of the western boundary of the National Petroleum Reserve—Alaska;

(vi) Arctic National Wildlife Refuge in Alaska.

(vii) Lands recommended for wilderness allocation by the surface managing agency:

(viii) Lands within Bureau of Land Management wilderness study areas;

(ix) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(x) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xi) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(b) *Acquired lands.* (1) Oil and gas in acquired lands are subject to lease under the Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359).

(2) *Exceptions.* (i) Units of the National Park System, except as provided in paragraph (g)(4) of this section;

(ii) Incorporated cities, towns and villages;

(iii) Naval petroleum and oil shale reserves and the National Petroleum Reserve—Alaska;

(iv) Tidelands or submerged coastal lands within the continental shelf adjacent or littoral to lands within the jurisdiction of the United States;

(v) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except oil, gas and other minerals subject to leasing under the Act;

(vi) Lands reported as excess under the Federal Property and Administrative Services Act of 1949;

(vii) Lands acquired by the United States by foreclosure or otherwise for resale.

(viii) Lands recommended for wilderness allocation by the surface managing agency;

(ix) Lands within Bureau of Land Management wilderness study areas;

(x) Lands designated by Congress as wilderness study areas, except where oil and gas leasing is specifically allowed to continue by the statute designating the study area;

(xi) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an Act of Congress; and

(xii) Lands within the National Wilderness Preservation System, subject to valid existing rights under section 4(d)(3) of the Wilderness Act established before midnight, December 31, 1983, unless otherwise provided by law.

(c) National Petroleum Reserve—Alaska is subject to lease under the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

(d) Where oil or gas is being drained from lands otherwise unavailable for leasing, there is implied authority in the agency having jurisdiction of those lands to grant authority to the Bureau of Land Management to lease such lands (see 43 U.S.C. 1457; also Attorney General's Opinion of April 2, 1941 (Vol. 40 Op. Atty. Gen. 41)).

(e) Where lands previously withdrawn or reserved from the public domain are no longer needed by the agency for which the lands were withdrawn or reserved and such lands are retained by the General Services Administration, or where acquired lands are declared as excess to or surplus by the General Services Administration, authority to lease such lands may be transferred to the Department in accordance with the Federal Property and Administrative Services Act of 1949 and the Mineral Leasing Act for Acquired Lands, as amended.

(f) The Act of May 21, 1930 (30 U.S.C. 301-306), authorizes the leasing of oil and gas deposits under certain rights-of-way to the owner of the right-of-way or any assignee.

(g) (1) The Act of May 9, 1942 (56 Stat. 273), as amended by the Act of October 25, 1949 (63 Stat. 886), authorizes leasing on certain lands in Nevada.

(2) The Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026), authorizes leasing on certain lands patented to the State of California.

(3) The Act of June 30, 1950 (16 U.S.C. 508(b)) authorizes leasing on certain National Forest Service Lands in Minnesota.

(4) *Units of the National Park System.* The Secretary is authorized to permit mineral leasing in the following units of the National Park System if he/she finds that such disposition would not have significant adverse effects on the administration of the area and if lease operations can be conducted in a manner that will preserve the scenic, scientific and historic features contributing to public enjoyment of the area, pursuant to the following authorities:

(i) *Lake Mead National Recreation Area*—The Act of October 8, 1964 (16 U.S.C. 460n *et seq.*).

(ii) *Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area*—The Act of November 8, 1965 (79 Stat. 1295; 16 U.S.C. 460q *et seq.*).

(iii) *Ross Lake and Lake Chelan National Recreation Areas*—The Act of October 2, 1968 (82 Stat. 926; 16 U.S.C. 90 *et seq.*).

(iv) *Glen Canyon National Recreation Area*—The Act of October 27, 1972 (86 Stat. 1311; 16 U.S.C. 460dd *et seq.*).

(5) *Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the Act of November 8, 1965 (Pub. L. 89-336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of leasable minerals from lands (or interest in lands) within the recreation area under the jurisdiction of the Secretary of Agriculture in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351-359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 17351, 17352, May 16, 1988; 53 FR 22835, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3100.0-5 Definitions.

As used in this part, the term:

(a) *Operator* means any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(b) *Unit operator* means the person authorized under the agreement approved by the Department of the Interior to conduct operations within the unit.

(c) *Record title* means a lessee's interest in a lease which includes the obligation to pay rent, and the rights to assign and relinquish the lease. Overriding royalty and operating rights are severable from record title interests.

(d) *Operating right* (working interest) means the interest created out of a lease authorizing the holder of that right to enter upon the leased lands to conduct drilling and related operations, including production of oil or gas from such lands in accordance with the terms of the lease.

(e) *Transfer* means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: *Assignment* which means a transfer of all or a portion of the lessee's record title interest in a lease; and *sublease* which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(f) *National Wildlife Refuge System Lands* means lands and water, or interests therein, administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife management areas or waterfowl production areas.

(g) *Actual drilling operations* includes not only the physical drilling of a well, but the testing, completing or equipping of such well for production.

(h)(1) *Primary term* of lease subject to section 4(d) of the Act prior to the revision of 1960 (30 U.S.C. 226-1(d)) means all periods of the life of the lease prior to its extension by reason of production of oil and gas in paying quantities; and

(2) *Primary term* of all other leases means the initial term of the lease. For competitive leases, except those within the National Petroleum Reserve—Alaska, this means 5 years and for noncompetitive leases this means 10 years.

(i) *Lessee* means a person or entity holding record title in a lease issued by the United States.

(j) *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

k) *Bid* means an amount of remit- nce offered as partial compensation r a lease equal to or in excess of the tional minimum acceptable bonus d set by statute or by the Secretary, bmitted by a person or entity for a ase parcel in a competitive lease sale.

8 FR 33662, July 22, 1983, as amended at FR 17352, May 16, 1988; 53 FR 22836, ne 17, 1988]

3100.1 Helium.

The ownership of and the right to xtract helium from all gas produced rom lands leased or otherwise dis- osed of under the Act have been re- erved to the United States.

3100.2 Drainage.

3100.2-1 Compensation for drainage.

Upon a determination by the au- horized officer that lands owned by he United States are being drained of il or gas by wells drilled on adjacent ands, the authorized officer may exe- cute agreements with the owners of adjacent lands whereby the United States and its lessees shall be compen- sated for such drainage. Such agree- ments shall be made with the consent of any lessee affected by an agree- ment. Such lands may also be offered for lease in accordance with part 3120 of this title.

§ 3100.2-2 Drilling and production or pay- ment of compensatory royalty.

Where lands in any leases are being drained of their oil or gas content by wells either on a Federal lease issued at a lower rate of royalty or on non-Federal lands, the lessee shall both drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling necessary wells, the lessee may, with the consent of the authorized officer, pay compensatory royalty in the amount determined in accordance with § 3162.2(a) of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988]

§ 3100.3 Options.

§ 3100.3-1 Enforceability.

(a) No option to acquire any interest in a lease shall be enforceable if entered into for a period of more than 3 years (including any renewal period that may be provided for in the option) without the approval of the Secretary.

(b) No option or renewal thereof shall be enforceable until a signed copy or notice of option has been filed in the proper BLM office. Each such signed copy or notice shall include:

(1) The names and addresses of the parties thereto;

(2) The serial number of the lease to which the option is applicable;

(3) A statement of the number of acres covered by the option and of the interests and obligations of the parties to the option, including the date and expiration date of the option; and

(4) The interest to be conveyed and retained in exercise of the option. Such notice shall be signed by all parties to the option or their duly authorized agents. The signed copy or notice of option required by this paragraph shall contain or be accompanied by a signed statement by the holder of the option that he/she is the sole party in interest in the option; if not, he/she shall set forth the names and provide a description of the interest therein of the other interested parties, and provide a description of the agreement between them, if oral, and a copy of such agreement, if written.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988. Redesignated at 53 FR 22836, June 17, 1988]

§ 3100.3-2 Effect of option on acreage.

The acreage to which the option is applicable shall be charged both to the grantor of the option and the option holder. The acreage covered by an unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the proper BLM office.

[48 FR 33662, July 22, 1983. Redesignated at 53 FR 22836, June 17, 1988]

§ 3100.3-3 Option statements.

Each option holder shall file in the proper BLM office within 90 days after June 30 and December 31 of each year a statement showing as of the prior June 30 and December 31, respectively:

(a) Any changes to the statements submitted under § 3100.3-1(b) of this title, and

(b) The number of acres covered by each option and the total acreage of all options held in each State.

[53 FR 17352, May 16, 1988. Redesignated and amended at 53 FR 22836, June 17, 1988]

Subpart 3101—Issuance of Leases

§ 3101.1-1 Lease form.

A lease shall be issued only on the standard form approved by the Director.

[53 FR 17352, May 16, 1988]

§ 3101.1-2 Surface use rights.

A lessee shall have the right to use so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to: Stipulations attached to the lease; restrictions deriving from specific, nondiscretionary statutes; and such reasonable measures as may be required by the authorized officer to minimize adverse impacts to other resource values, land uses or users not addressed in the lease stipulations at the time operations are proposed. To the extent consistent with lease rights granted, such reasonable measures may include, but are not limited to, modification to siting or design of facilities, timing of operations, and specification of interim and final reclamation measures. At a minimum, measures shall be deemed consistent with lease rights granted provided that they do not: require relocation of proposed operations by more than 200 meters; require that operations be sited off the leasehold; or prohibit new surface disturbing operations for a period in excess of 60 days in any lease year.

[53 FR 17352, May 16, 1988]

§ 3101.1-3 Stipulations and information notices.

The authorized officer may require stipulations as conditions of lease issuance. Stipulations shall become part of the lease and shall supersede inconsistent provisions of the standard lease form. Any party submitting a bid under subpart 3120 of this title, or an offer under § 3110.1(b) of this title during the period when use of the parcel number is required pursuant to § 3110.5-1 of this title, shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale available from the proper BLM office. A party filing a noncompetitive offer in accordance with § 3110.1(a) of this title shall be deemed to have agreed to stipulations applicable to the specific parcel as indicated in the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, unless the offer is withdrawn in accordance with § 3110.6 of this title. An information notice has no legal consequences, except to give notice of existing requirements, and may be attached to a lease by the authorized officer at the time of lease issuance to convey certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.

[53 FR 17352, May 16, 1988, as amended at 53 FR 22836, June 17, 1988]

§ 3101.1-4 Modification or waiver of lease terms and stipulations.

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines

at a modification or waiver of a
ase term or stipulation is substantial,
e modification or waiver shall be
bject to public review for at least a
-day period.

3 FR 22836, June 17, 1988; 53 FR 31958,
ug. 22, 1988]

3101.2 Acreage limitations.

3101.2-1 Public domain lands.

(a) No person or entity shall take,
old, own or control more than
46,080 acres of Federal oil and gas
eases in any one State at any one
me. No more than 200,000 acres of
uch acres may be held under option.

(b) In Alaska, the acreage that can
e taken, held, owned or controlled is
imited to 300,000 acres in the north-
rn leasing district and 300,000 acres
n the southern leasing district, of
which no more than 200,000 acres may
e held under option in each of the 2
easing districts. The boundary be-
ween the 2 leasing districts in Alaska
begins at the northeast corner of the Tetlin National Wildlife Refuge as es-
ablished on December 2, 1980 (16
U.S.C. 3101), at a point on the boundary between the United States and Canada, then northwesterly along the northern boundary of the refuge to the left limit of the Tanana River (63°9'38" north latitude, 142°20'52" west longitude), then westerly along the left limit to the confluence of the Tanana and Yukon Rivers, and then along the left limit of the Yukon River from said confluence to its principal southern mouth.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988]

§ 3101.2-2 Acquired lands.

An acreage limitation separate from, but equal to the acreage limitation for public domain lands described in § 3101.2-1 of this title, applies to acquired lands. Where the United States owns only a fractional interest in the mineral resources of the lands involved in a lease, only that part owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be charged as acreage holdings until the lease for the future interest becomes effective.

§ 3101.2-3 Excepted acreage.

Leases committed to any unit or cooperative plan approved or prescribed by the Secretary and leases subject to an operating, drilling or development contract approved by the Secretary, other than communitization agreements, shall not be included in computing accountable acreage. Acreage subject to offers to lease, overriding royalties and payments out of production shall not be included in computing accountable acreage.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17352, May 16, 1988]

§ 3101.2-4 Excess acreage.

(a) Where, as the result of the termination or contraction of a unit or cooperative plan, the elimination of a lease from an operating, drilling or development contract a party holds or controls excess accountable acreage, said party shall have 90 days from that date to reduce the holdings to the prescribed limitation and to file proof of the reduction in the proper BLM office. Where as a result of a merger or the purchase of the controlling interest in a corporation, acreage in excess of the amount permitted is acquired, the party holding the excess acreage shall have 180 days from the date of the merger or purchase to divest the excess acreage. If additional time is required to complete the divestiture of the excess acreage, a petition requesting additional time, along with a full justification for the additional time, may be filed with the authorized officer prior to the termination of the 180-day period provided herein.

(b) If any person or entity is found to hold accountable acreage in violation of the provisions of these regulations, lease(s) or interests therein shall be subject to cancellation or forfeiture in their entirety, until sufficient acreage has been eliminated to comply with the acreage limitation. Excess acreage or interest shall be cancelled in the inverse order of acquisition.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3101.2-5 Computation.

The accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party who is the beneficial owner of more than 10 percent of the stock of a corporation which holds Federal oil and gas leases shall be the party's proportionate part of the corporation's accountable acreage. Parties to a contract for development of leased lands and co-parties, except those operating, drilling or development contracts subject to § 3101.2-3 of this title, shall be charged with their proportionate interests in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the laws for any one party shall be permitted.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 17353, May 16, 1988]

§ 3101.2-6 Showing required.

At any time the authorized officer may require any lessee or operator to file with the Bureau of Land Management a statement showing as of specified date the serial number and the date of each lease in which he/she has any interest, in the particular State, setting forth the acreage covered thereby.

§ 3101.3 Leases within unit areas.

§ 3101.3-1 Joinder evidence required.

Before issuance of a lease for lands within an approved unit, the lease offeror shall file evidence with the proper BLM office of having joined in the unit agreement and unit operating agreement or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable to the authorized officer the operator shall be permitted to operate independently but shall be required to conform to the terms and provisions of the unit agreement with respect to such operations.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3101.3-2 Separate leases to issue.

A lease offer for lands partly within and partly outside the boundary of a unit shall result in separate leases, one for the lands within the unit, and one for the lands outside the unit.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3101.4 Lands covered by application to close lands to mineral leasing.

Offers filed on lands within a pending application to close lands to mineral leasing shall be suspended until the segregative effect of the application is final.

§ 3101.5 National Wildlife Refuge System lands.

§ 3101.5-1 Wildlife refuge lands.

(a) Wildlife refuge lands are those lands embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(b) No offers for oil and gas leases covering wildlife refuge lands shall be accepted and no leases covering such lands shall be issued except as provided in § 3100.2 of this title. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau on a form approved by the Director.

§ 3101.5-2 Coordination lands.

(a) Coordination lands are those lands withdrawn or acquired by the

United States and made available to the States by cooperative agreements entered into between the Fish and Wildlife Service and the game commissions of the various States, in accordance with the Act of March 10, 1934 (48 Stat. 401), as amended by the Act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the Fish and Wildlife Service as the custodial agency of the United States.

(b) Representatives of the Bureau and the Fish and Wildlife Service shall, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those coordination lands which shall not be subject to oil and gas leasing. Coordination lands not closed to oil and gas leasing shall be subject to leasing on the imposition of such stipulations as are agreed upon by the State Game Commission, the Fish and Wildlife Service and the Bureau.

§ 3101.5-3 Alaska wildlife areas.

No lands within a refuge in Alaska open to leasing shall be available until the Fish and Wildlife Service has first completed compatability determinations.

§ 3101.5-4 Stipulations.

Leases shall be issued subject to stipulations prescribed by the Fish and Wildlife Service as to the time, place, ature and condition of such oper- ions in order to minimize impacts to th and wildlife populations and habi- t and other refuge resources on the eas leased. The specific conduct of se activities on any refuge lands all be subject to site-specific stipula- ns prescribed by the Fish and Wild- Service.

101.6 Recreation and public purposes lands.

nder the Recreation and Public poses Act, as amended (43 U.S.C. *et seq.*), all lands within Recreation and Public Purposes leases and patents are subject to lease under the provisions of this part, subject to such conditions as the Secretary deems appropriate.

§ 3101.7 Federal lands administered by an agency outside of the Department of the Interior.

§ 3101.7-1 General requirements.

(a) Acquired lands shall be leased only with the consent of the surface managing agency, which upon receipt of a description of the lands from the authorized officer, shall report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

(b) Public domain lands shall be leased only after the Bureau has consulted with the surface managing agency and has provided it with a description of the lands, and the surface managing agency has reported its recommendation to lease with stipulations, if any, or not to lease to the authorized officer. If consent or lack of objection of the surface managing agency is required by statute to lease public domain lands, the procedure in paragraph (a) of this section shall apply.

(c) National Forest System lands whether acquired or reserved from the public domain shall not be leased over the objection of the Forest Service. The provisions of paragraph (a) of this section shall apply to such National Forest System lands.

[53 FR 22836, June 17, 1988]

§ 3101.7-2 Action by the Bureau of Land Management.

(a) Where the surface managing agency has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer shall incorporate the stipulations into any lease which it may issue. The authorized officer may add additional stipulations.

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands to which the surface managing agency objects or withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

(c) The authorized officer shall review all recommendations and shall accept all reasonable recommendations of the surface managing agency.

[48 FR 33662, July 22, 1983. Redesignated and amended at 53 FR 22836, June 17, 1988]

§ 3101.7-3 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under part 4 of this title.

(b) Where, as provided by statute, the surface managing agency has required that certain stipulations be included in a lease or has consented, or objected or refused to consent to leasing, any appeal by an affected lease offeror shall be pursuant to the administrative remedies provided by the particular surface managing agency.

[53 FR 22837, June 17, 1988]

§ 3101.8 State's or charitable organization's ownership of surface overlying Federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, with reservation of the oil and gas rights to the United States, such party shall be given an opportunity to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations and also to file any objections it may have to the issuance of a lease. Where a party controlling the surface opposes the issuance of a lease or wishes to place such restrictive stipulations upon the lease that it could not be operated upon or become part of a drilling unit and hence is without mineral value, the facts submitted in support of the opposition or request for restrictive stipulations shall be given consideration and each case decided on its merits. The opposition to lease or necessity for restrictive stipulations expressed by the party controlling the surface affords no legal basis or authority to refuse to issue the lease or to issue the lease with the requested restrictive stipulations for the reserved minerals in the lands; in such case, the final determination whether to issue and with what stipulations, or not to issue the lease depends upon whether or not the interests of the United States would best be served by the issuance of the lease.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 22837, June 17, 1988]

Subpart 3102—Qualifications of Lessees

§ 3102.1 Who may hold leases.

Leases or interests therein may be acquired and held only by citizens of the United States; associations (including partnerships and trusts) of such citizens; corporations organized under the laws of the United States or of any State or Territory thereof; and municipalities.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3102.2 Aliens.

Leases or interests therein may be acquired and held by aliens only through stock ownership, holding or control in a present or potential lessee that is incorporated under the laws of the United States or of any State or territory thereof, and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. If it is determined that a country has denied similar or like privileges to citizens or corporations of the United States, it would be placed on a list available from any Bureau of Land Management State office.

[53 FR 17353, May 16, 1988]

§ 3102.3 Minors.

Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf. Such legal guardians or trustees shall be citizens of the United States or otherwise meet the provisions of § 3102.1 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17353, May 16, 1988]

§ 3102.4 Signature.

(a) The original of an offer or bid shall be signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of the present or potential lessee.

(b) Three copies of a transfer of record title or of operating rights (sublease), as required by section 30a of the act, shall be originally signed and dated by the transferor or anyone authorized to sign on behalf of the transferor. However, a transferee, or anyone authorized to sign on his or her behalf, shall be required to sign and date only 1 original request for approval of a transfer.

(c) Documents signed by any party other than the present or potential lessee shall be rendered in a manner to reveal the name of the present or potential lessee, the name of the signatory and their relationship. A signatory who is a member of the organization that constitutes the present or potential lessee (e.g., officer of a corporation, partner of a partnership, etc.) may be requested by the authorized officer to clarify his/her relationship, when the relationship is not shown on the documents filed.

(d) Submission of a qualification number does not meet the requirements of paragraph (c) of this section.

[53 FR 17353, May 16, 1988]

§ 3102.5 Compliance, certification of compliance and evidence.

3102.5-1 Compliance.

In order to actually or potentially wn, hold, or control an interest in a ase or prospective lease, all parties, cluding corporations, and all mem- rs of associations, including partner- ips of all types, shall, without excep- n, be qualified and in compliance th the act. Compliance means that the lessee, potential lessee, and all such parties (as defined in § 3000.0-5(k)) are:

(a) Citizens of the United States (see § 3102.1) or alien stockholders in a corporation organized under State or Federal law (see § 3102.2);

(b) In compliance with the Federal acreage limitations (see § 3101.2);

(c) Not minors (see § 3102.3);

(d) Except for an assignment or transfer under subpart 3106 of this title, in compliance with section 2(a)(2)(A) of the Act, in which case the signature on an offer or lease constitutes evidence of compliance. A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions of § 3108.3 of this title. The term *entity* is defined at § 3400.0-5(rr) of this title.

(e) Not in violation of the provisions of section 41 of the Act; and

(f) In compliance with section 17(g) of the Act, in which case the signature on an offer, lease, assignment, transfer, constitutes evidence of compliance that the signatory and any subsidiary, affiliate, or person, association, or corporation controlled by or under common control with the signatory, as defined in §3400.0-5(rr) of this title, has not failed or refused to comply with reclamation requirements with respect to all leases and operations thereon in which such person or entity has an interest. Noncompliance with section 17(g) of the Act begins on the effective date of the imposition of a civil penalty by the authorized officer under § 3163.2 of this title, or when the bond is attached by the authorized officer for reclamation purposes, whichever comes first. A lease issued, or an assignment or transfer approved, to any such person or entity in violation of this paragraph (f) shall be subject to the cancellation provisions of § 3108.3 of this title, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings. Noncompliance shall end upon a determination by the authorized officer that all required reclamation has been completed and that the United States has been fully reimbursed for any costs incurred due to the required reclamation.

(g) In compliance with § 3106.1(b) of this title and section 30A of the Act. The authorized officer may accept the signature on a request for approval of an assignment of less than 640 acres outside of Alaska (2,560 acres within Alaska) as acceptable certification that the assignment would further the development of oil and gas, or the authorized officer may apply the provisions of § 3102.5-3 of this title.

[53 FR 22837, June 17, 1988]

§ 3102.5-2 Certification of compliance.

Any party(s) seeking to obtain an interest in a lease shall certify it is in compliance with the act as set forth in § 3102.5-1 of this title. A party(s) that is a corporation or publicly traded association, including a publicly traded partnership, shall certify that constituent members of the corporation, association or partnership holding or controlling more than 10 percent of the instruments of ownership of the corporation, association or partnership, are in compliance with the act. Execution and submission of an offer, competitive bid form, or request for approval of a transfer of record title or of operating rights (sublease), constitutes certification of compliance.

[53 FR 17353, May 16, 1988; 53 FR 22837, June 17, 1988]

§ 3102.5-3 Evidence of compliance.

The authorized officer may request at any time further evidence of compliance and qualification from any party holding or seeking to hold an interest in a lease. Failure to comply with the request of the authorized officer shall result in adjudication of the action based on the incomplete submission.

[53 FR 17353, May 16, 1988]

Subpart 3103—Fees, Rentals and Royalty

§ 3103.1 Payments.

§ 3103.1-1 Form of remittance.

All remittances shall be by personal check, cashier's check, certified check, or money order, and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. Payments made to the Bureau may be made by other arrangements such as by electronic funds transfer or credit card when specifically authorized by the Bureau. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

[53 FR 22837, June 17, 1988]

§ 3103.1-2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for requests for approval of a transfer and all first-year rentals and bonuses for leases issued under Group 3100 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals, except for leases specified in paragraph (b) of this section, shall be paid to the Service at the following address: Minerals Management Service, Royalty Management Program/BRASS, Box 5640 T.A., Denver, CO 80217.

(b) All rentals and royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all payments under subsurface storage agreements and easements for directional drilling shall be paid to the Service.

[48 FR 33662, July 22, 1983, as amended at 49 FR 11637, Mar. 27, 1984; 49 FR 39330, Oct. 5, 1984; 53 FR 17353, May 16, 1988]

§ 3103.2 Rentals.

§ 3103.2-1 Rental requirements.

(a) Each competitive bid or competitive nomination submitted in response to a List of Lands Available for Competitive Nominations or Notice of Competitive Lease Sale, and each noncompetitive lease offer shall be accompanied by full payment of the first year's rental based on the total acreage, if known, and, if not known, shall be based on 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent or $200, whichever is less, shall be accepted by the authorized officer provided all other requirements are met. Rental submitted shall be determined based on the total amount remitted less all required fees. The additional rental shall be paid within 30 days from notice of the deficiency under penalty of cancellation of the lease.

(b) If the acreage is incorrectly indicated in a List of Lands Available for Competitive Nominations or a Notice of Competitive Lease Sale, payment of the rental based on the error is curable within 15 calendar days of receipt of notice from the authorized officer of the error.

(c) Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable for the full acreage in such lands.

[48 FR 33662, July 22, 1983, as amended at 49 FR 26920, June 29, 1984, 53 FR 22837, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3103.2-2 Annual rental payments.

Rentals shall be paid on or before the lease anniversary date. A full year's rental shall be submitted even when less than a full year remains in the lease term, except as provided in § 3103.4-2(d) of this title. Failure to make timely payment shall cause a lease to terminate automatically by operation of law. If the designated Service office is not open on the anniversary date, payment received on the next day the designated Service office is open to the public shall be deemed to be timely made. Payments made to an improper BLM or Service office shall be returned and shall not be forwarded to the designated Service office. Rental shall be payable at the following rates:

(a) The annual rental for all leases issued subsequent to December 22, 1987, shall be $1.50 per acre or fraction thereof for the first 5 years of the lease term and $2 per acre or fraction for any subsequent year, except as provided in paragraph (b) of this section;

(b) The annual rental for all leases issued on or before December 22, 1987, or issued pursuant to an application or offer to lease filed prior to that date shall be as stated in the lease or in regulations in effect on December 22, 1987, except:

(1) Leases issued under former subpart 3112 of this title on or after February 19, 1982, shall be subject after February 1, 1989, to annual rental in the sixth and subsequent lease years of $2 per acre or fraction thereof;

(2) The rental rate of any lease determined after December 22, 1987, to be in a known geological structure outside of Alaska or in a favorable petroleum geological province within Alaska shall not be increased because of such determination;

(3) Exchange and renewal leases shall be subject to rental of $2 per acre or fraction thereof upon exchange or renewal;

(c) Rental shall not be due on acreage for which royalty or minimum royalty is being paid, except on nonproducing leases when compensatory royalty has been assessed in which case annual rental as established in the lease shall be due in addition to compensatory royalty;

(d) On terminated leases that were originally issued noncompetitively and are reinstated under § 3108.2-3 of this title, and on noncompetitive leases that were originally issued under § 3108.2-4 of this title, the annual rental shall be $5 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease or convert an abandoned, unpatented oil placer mining claim;

(e) On terminated leases that were originally issued competitively, the annual rental shall be $10 per acre or fraction thereof beginning with the termination date upon the filing, on or after the effective date of this regulation, of a petition to reinstate a lease under § 3108.2-3 of this title; and

(f) Each succeeding time a specific lease is reinstated under § 3108.2-3 of this title, the annual rental on that lease shall increase by an additional $5 per acre or fraction thereof for leases that were originally issued noncompetitively and by an additional $10 per acre or fraction thereof for leases that were originally issued competitively.

[53 FR 17353, May 16, 1988 and 53 FR 22837, June 17, 1988]

§ 3103.3 Royalties.

§ 3103.3-1 Royalty on production.

(a) Royalty on production shall be payable only on the mineral interest owned by the United States. Royalty shall be paid in amount or value of the production removed or sold as follows:

(1) 12½ percent on all leases, including exchange and renewal leases and leases issued in lieu of unpatented oil placer mining claims under § 3108.2-4 of this title, issued after December 22, 1987, except:

(i) Leases issued after December 22, 1987, resulting from offers to lease or bids filed on or before December 22, 1987, which are subject to the rates in effect on December 22, 1987; and

(ii) Leases issued on or before December 22, 1987, which are subject to the rates contained in the lease or in regulations at the time of issuance;

(2) 16⅔ percent on noncompetitive leases reinstated under § 3108.2-3 of this title plus an additional 2 percentage-point increase added for each succeeding reinstatement;

(3) Not less than 4 percentage points above the rate used for royalty determination contained in the lease that is reinstated or in force at the time of issuance of the lease that is reinstated for competitive leases, plus an additional 2 percentage-point increase added for each succeeding reinstatement.

(b) Leases that qualify under specific provisions of the Act of August 8, 1946 (30 U.S.C. 226c) may apply for a limitation of a 12½ percent royalty rate.

(c) The average production per well per day for oil and gas shall be determined pursuant to 43 CFR 3162.7-4.

(d) Payment of a royalty on the helium component of gas shall not convey the right to extract the helium. Applications for the right to extract helium shall be made under part 16 of this title.

[53 FR 22838, June 17, 1988]

§ 3103.3-2 Minimum royalties.

(a) A minimum royalty shall be payable at the expiration of each lease year beginning on or after a discovery of oil or gas in paying quantities on the lands leased, except that on unitized leases the minimum royalty shall be payable only on the participating acreage, at the following rates:

(1) On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $1 per acre or fraction thereof in lieu of rental, except as provided in paragraph (a)(2) of this section; and

(2) On leases issued from offers filed after December 22, 1987, and on competitive leases issued from successful bids placed at oral auctions conducted after December 22, 1987, a minimum royalty in lieu of rental of not less than the amount of rental which otherwise would be required for that lease year.

(b) Minimum royalties shall not be prorated for any lands in which the United States owns a fractional interest but shall be payable on the full acreage of the lease.

(c) Minimum royalties and rentals on non-participating acreage shall be payable to the Service.

(d) The minimum royalty provisions of this section shall be applicable to leases reinstated under § 3108.2-3 of this title and leases issued under § 3108.2-4 of this title.

[48 FR 33662, July 22, 1983, as amended at 49 FR 11637, Mar. 27, 1984; 49 FR 30448, July 30, 1984; 53 FR 22838, June 17, 1988]

§ 3103.4 Promotion of development.

§ 3103.4-1 Waiver, suspension or reduction of rental, royalty or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary, upon a determination that it is necessary to promote development or that the leases cannot be successfully operated under the terms provided therein, may waive, suspend or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or any portion thereof.

(b)(1) An application for the above benefits shall be filed in the proper BLM office. It shall contain the serial number of the leases, the names of the record title holders, operating rights owners (sublessees), and operators for each lease, the description of the lands by legal subdivision and a description of the relief requested.

(2) Each application shall show the number, location and status of each well drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty, the number of wells counted as producing each month and the average production per well per day.

(c) Every application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any production and all facts tending to show whether the wells can be successfully operated upon the fixed royalty or rental. Where the application is for a reduction in royalty, full information shall be furnished as to whether overriding royalties, payments out of production, or similar interests are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant shall also file agreements of the holders to a reduction of all other royalties or similar payments from the leasehold to an aggregate not in excess of one-half the royalties due the United States.

(d) Petition may be made for reduction of royalty under § 3108.2–3(f) for leases reinstated under § 3108.2–3 of this title and under § 3108.2–4(i) for noncompetitive leases issued under § 3108.2–4 of this title. Petitions to waive, suspend or reduce rental or minimum royalty for leases reinstated under § 3108.2–3 of this title or for leases issued under § 3108.2–4 of this title may be made under this section.

[48 FR 33662, July 22, 1983; 48 FR 39225, Aug. 30, 1983, as amended at 49 FR 30448, July 30, 1984; 53 FR 17354, May 16, 1988]

§ 3103.4–2 Suspension of operations and/or production.

(a) A suspension of all operations and production may be directed or consented to by the authorized officer only in the interest of conservation of natural resources. A suspension of operations only or a suspension of production only may be directed or consented to by the authorized officer in cases where the lessee is prevented from operating on the lease or producing from the lease, despite the exercise of due care and diligence, by reason of *force majeure*, that is, by matters beyond the reasonable control of the lessee. Applications for any suspension shall be filed in the proper BLM office. Complete information showing the necessity of such relief shall be furnished.

(b) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(c) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer, in accordance with the provisions of § 3165.1 of this title.

(d) Rental and minimum royalty payments shall be suspended during any period of suspension of all operations and production directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension of all operations and production becomes effective, or if the suspension of all operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental and minimum royalty payments shall resume on the first day of the lease month in which the suspension of all operations and production is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease. Rental and minimum royalty payments shall not be suspended during any period of suspension of operations only or suspension of production only.

(e) Where all operations and production are suspended on a lease on which there is a well capable of producing in paying quantities and the authorized officer approves resumption of operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental and minimum royalty payments, as provided in paragraph (d) of this section.

(f) The relief authorized under this section also may be obtained for any Federal lease included within an approved unit or cooperative plan of development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

[53 FR 17354, May 16, 1988]

Subpart 3104—Bonds

§ 3104.1 Bond obligations.

(a) Prior to the commencement of surface disturbing activities related to drilling operations, the lessee, operating rights owner (sublessee), or operator shall submit a surety or a personal bond, conditioned upon compliance with all of the terms and conditions of the entire leasehold(s) covered by the bond, as described in this subpart. The bond amounts shall be not less than the minimum amounts described in this subpart in order to ensure compliance with the act, including complete and timely plugging of the well(s), reclamation of the lease area(s), and the restoration of any lands or surface waters adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease(s) in accordance with, but not limited to, the standards and requirements set forth in §§ 3162.3 and 3162.5 of this title and orders issued by the authorized officer.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly indicate on its face that Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in the case of default in the performance of the terms and conditions of a lease.

Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its term. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

[53 FR 22838, June 17, 1988]

§ 3104.2 Lease bond.

A lease bond may be posted by a lessee, owner of operating rights (sublessee), or operator in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different formations or portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her own name as principal, or a bond in the name of the lessee or sublessee, provided that a consent of the surety, or the obligor in the case of a personal bond, to include the operator under the coverage of the bond is furnished to the Bureau office maintaining the bond.

[53 FR 22839, June 17, 1988]

§ 3104.3 Statewide and nationwide bonds.

(a) In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $25,000 covering all leases and operations in any one State.

(b) In lieu of lease bonds or statewide bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $150,000 covering all leases and operations nationwide.

[53 FR 22839, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3104.4 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3104.1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3186.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

[53 FR 22839, June 17, 1988]

§ 3104.5 Increased amount of bonds.

(a) When an operator desiring approval of an Application for Permit to Drill has caused the Bureau to make a demand for payment under a bond or other financial guarantee within the 5-year period prior to submission of the Application for Permit to Drill, due to failure to plug a well or reclaim lands completely in a timely manner, the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs as estimated by the authorized officer of plugging the well and reclaiming the disturbed area involved in the proposed operation, or in the minimum amount as prescribed in this subpart, whichever is greater.

(b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to factors, including, but not limited to, a history of previous violations, a notice from the Service that there are uncollected royalties due, or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances shall it exceed the total of the estimated costs of plugging and reclamation, the amount of uncollected royalties due to the Service, plus the amount of monies owed to the lessor due to previous violations remaining outstanding.

[53 FR 22839, June 17, 1988]

§ 3104.6 Where filed and number of copies.

All bonds shall be filed in the proper BLM office on a current form approved by the Director. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. A bond filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of such bond. For purposes of §§ 3104.2 and 3104.3(a) of this title, bonds or bond riders shall be filed in the Bureau State office having jurisdiction of the lease or operations covered by the bond or rider. Nationwide bonds may be filed in any Bureau State office (See § 1821.2-1).

[53 FR 17354, May 16, 1988]

§ 3104.7 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bonds and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the principal shall either post a new bond or restore the existing bond(s) to the amount previously held or a larger amount as determined by the authorized officer. In lieu thereof, the principal may file separate or substitute bonds for each lease covered by the deficient bond(s). Where the obligation incurred exceeds the face amount of the bond(s), the principal shall make full payment to the United States for all obligations incurred that are in excess of the face amount of the bond(s) and shall post a new bond in the amount previously held or such larger amount as determined by the authorized officer. The restoration of a bond or posting of a new bond shall be made within 6 months or less after receipt of notice from the authorized officer. Failure to comply with these requirements may subject all leases covered by such bond(s) to cancellation under the provisions of § 3108.3 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17354, May 16, 1988]

§ 3104.8 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease have been met.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17355, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

Subpart 3105—Cooperative Conservation Provisions

§ 3105.1 Cooperative or unit agreement.

The suggested contents of such an agreement and the procedures for obtaining approval are contained in 43 CFR part 3180.

§ 3105.2 Communitization or drilling agreements.

§ 3105.2-1 Where filed.

(a) Requests to communitize separate tracts shall be filed, in triplicate, with the proper BLM office.

(b) Where a duly executed agreement is submitted for final Departmental approval, a minimum of 3 signed counterparts shall be submitted. If State lands are involved, 1 additional counterpart shall be submitted.

§ 3105.2-2 Purpose.

When a lease or a portion thereof cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve communitization or drilling agreements for such lands with other lands, whether or not owned by the United States, upon a determination that it is in the public interest. Operations or production under such an agreement shall be deemed to be operations or production as to each lease committed thereto.

§ 3105.2-3 Requirements.

(a) The communitization or drilling agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of the United States. The agreement shall be signed by or on behalf of all necessary parties and shall be filed prior to the expiration of the Federal lease(s) involved in order to confer the benefits of the agreement upon such lease(s).

(b) The agreement shall be effective as to the Federal lease(s) involved only if approved by the authorized officer. Approved communitization agreements are considered effective from the date of the agreement or from the date of the onset of production from the communitized formation, whichever is earlier, except when the spacing unit is subject to a State pooling order after the date of first sale, then the effective date of the agreement may be the effective date of the order.

(c) The public interest requirement for an approved communitization agreement shall be satisfied only if the well dedicated thereto has been completed for production in the communitized formation at the time the agreement is approved or, if not, that the operator thereafter commences and/or diligently continues drilling operations to a depth sufficient to test the communitized formation or establish to the satisfaction of the authorized officer that further drilling of the well would be unwarranted or impracticable. If an application is received for voluntary termination of a communitization agreement during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer shall be invalid and no Federal lease shall be eligible for extension under § 3107.4 of this title.

[53 FR 17355, May 16, 1988]

§ 3105.3 Operating, drilling or development contracts.

§ 3105.3-1 Where filed.

A contract submitted for approval under this section shall be filed with the proper BLM office, together with enough copies to permit retention of 5 copies by the Department after approval.

§ 3105.3-2 Purpose.

Approval of operating, drilling or development contracts ordinarily shall be granted only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a scale large enough to justify the discovery, development, production or transportation of oil or gas and to finance the same.

§ 3105.3-3 Requirements.

The contract shall be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan for development and operation of the field. All the contracts held by the same contractor in the area or field shall be submitted for approval at the same time and full disclosure of the projects made.

§ 3105.4 Combination for joint operations or for transportation of oil.

§ 3105.4-1 Where filed.

An application under this section together with sufficient copies to permit retention of 5 copies by the Department after approval shall be filed with the proper BLM office.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984]

§ 3105.4-2 Purpose.

Upon obtaining approval of the authorized officer, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing as a common carrier a pipeline or lines or railroads to be operated and used by them jointly in the transportation of oil or gas from their wells or from the wells of other lessees.

§ 3105.4-3 Requirements.

The application shall show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of law.

§ 3105.4-4 Rights-of-way.

Rights-of-way for pipelines may be granted as provided in part 2880 of this title.

§ 3105.5 Subsurface storage of oil and gas.

§ 3105.5-1 Where filed.

(a) Applications for subsurface storage shall be filed in the proper BLM office.

(b) Enough copies of the final agreement signed by all the parties in interest shall be submitted to permit the retention of 5 copies by the Department after approval.

§ 3105.5-2 Purpose.

In order to avoid waste and to promote conservation of natural resources, the Secretary, upon application by the interested parties, may authorize the subsurface storage of oil and gas, whether or not produced from lands owned by the United States. Such authorization shall provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced.

§ 3105.5-3 Requirements.

The agreement shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental or royalty offered to be paid for such storage and all essential information showing the necessity for such project.

§ 3105.5-4 Extension of lease term.

Any lease used for the storage of oil or gas shall be extended for the period of storage under an approved agreement. The obligation to pay annual lease rent continues during the extended period.

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved by the authorized officer if it is determined that there is sufficient justification and it is in the public interest. Each application for consolidation of leases shall be considered on its own merits. Leases to different lessees for different terms, rental and royalty rates, and those containing provisions required by law that cannot be reconciled, shall not be consolidated. The effective date of a consolidated lease shall be that of the oldest lease involved in the consolidation.

[53 FR 17355, May 16, 1988]

Subpart 3106—Transfers by Assignment, Sublease or Otherwise

SOURCE: 53 FR 17355, May 16, 1988, unless otherwise noted.

§ 3106.1 Transfers, general.

(a) Leases may be transferred by assignment or sublease as to all or part of the acreage in the lease or as to either a divided or undivided interest therein. An assignment of a separate zone or deposit, or of part of a legal subdivision, shall be disapproved.

(b) An assignment of less than 640 acres outside Alaska or of less than 2,560 acres within Alaska shall be disapproved unless the assignment constitutes the entire lease or is demonstrated to further the development of oil and gas to the satisfaction of the authorized officer. Execution and submission of a request for approval of such an assignment shall certify that the assignment would further the development of oil and gas, subject to the provisions of § 3102.5-3 of this title. The rights of the transferee to a lease or an interest therein shall not be recognized by the Department until the transfer has been approved by the authorized officer. A transfer may be withdrawn in writing, signed by the transferor and the transferee, if the transfer has not been approved by the authorized officer. A request for approval of a transfer of a lease or interest in a lease shall be filed within 90 days from the date of its execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect. A transfer of production payments or overriding royalty or other similar payments, arrangements, or interests shall be filed in the proper BLM office but shall not require approval.

(c) No transfer of an offer to lease or interest in a lease shall be approved prior to the issuance of the lease.

53 FR 22839, June 17, 1988]

3106.2 Qualifications of transferees.

Transferees shall comply with the rovisions of subpart 3102 of this title nd post any bond that may be required.

3106.3 Filing fees.

Each transfer of record title or of perating rights (sublease) or each ransfer of royalty interest, payment ut of production or similar interest or each lease, when filed, shall be accompanied by a nonrefundable filing ee of $25. A transfer not accompanied y the required filing fee shall not be ccepted and shall be returned.

3106.4 Forms.

3106.4-1 Transfers of record title and of operating rights (subleases).

Each transfer of record title or of an perating right (sublease) shall be iled with the proper BLM office on a urrent form approved by the Director r exact reproductions of the front nd back of such form. A transfer filed n a form not currently in use shall be cceptable, unless such form has been eclared obsolete by the Director prior o the filing of the transfer. A separate form for each transfer, in triplicate, originally executed shall be filed or each lease out of which a transfer s made. Only 1 originally executed opy of a transferee's request for aproval for each transfer shall be required, including in those instances here several transfers to a transferee ave been submitted at the same time See also § 3106.4-3). Copies of docuents other than the current form aproved by the Director shall not be bmitted. However, reference(s) to her documents containing informaon affecting the terms of the trans r may be made on the submitted rm.

106.4-2 Transfers of other interests, including royalty interests and production payments.

a) Each transfer of overriding royal interest, payment out of production similar interests created or reserved lease in conjunction with a trans of record title or of operating rights (sublease) shall be described for each lease on the current form when filed.

(b) Each transfer of overriding royalty interest, payment out of production or similar interests created or reserved in a lease independently of a transfer of record title or of operating rights (sublease), if not filed on the current form, shall be described and shall include the transferee's executed statement as to his/her qualifications under subpart 3102 of this title. A single executed copy of each such transfer of other interests for each lease shall be filed with the proper BLM office.

§ 3106.4-3 Mass transfers.

(a) A mass transfer may be utilized in lieu of the provisions of §§ 3106.4-1 and 3106.4-2 of this title when a transferor transfers interests of any type in a large number of Federal leases to the same transferee.

(b) Three originally executed copies of the mass transfer shall be filed with each proper BLM office administering any lease affected by the mass transfer. The transfer shall be on a current form approved by the Director or an exact reproduction of both sides thereof, with an exhibit attached to each copy listing the following for each lease:

(1) The serial number;

(2) The type and percent of interest being conveyed; and

(3) A description of the lands affected by the transfer in accordance with § 3106.5 of this title.

(c) One reproduced copy of the form required by paragraph (b) of this section shall be filed with the proper BLM office for each lease involved in the mass transfer. A copy of the exhibit for each lease may be limited to line items pertaining to individual leases as long as that line item includes the information required by paragraph (b) of this section.

(d) A nonrefundable filing fee of $25 for each such interest transferred for each lease, in accordance with the provisions of § 3106.3 of this title, shall accompany a mass transfer.

§ 3106.5 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease or in the manner required by § 3110.5 of this title, except no land description is required when 100 percent of the entire area encompassed within a lease is conveyed.

[48 FR 33662, July 22, 1983, as amended at 55 FR 12350, Apr. 3, 1990]

§ 3106.6 Bonds.

§ 3106.6-1 Lease bond.

Where a lease bond is maintained by the lessee or operating rights owner (sublessee) in connection with a particular lease, the transferee of record title interest or operating rights in such lease shall furnish, if bond coverage continues to be required, either a proper bond or consent of the surety under the existing bond to become co-principal on such bond if the transferor's bond does not expressly contain such consent. Where bond coverage is provided by an operator, the new operator shall furnish an appropriate replacement bond or provide evidence of consent of the surety under the existing bond to become co-principal on such bond.

§ 3106.6-2 Statewide/nationwide bond.

If the transferee is maintaining a statewide or nationwide bond, a lease bond shall not be required, but the amount of the bond may be increased to an amount determined by the authorized officer in accordance with the provisions of § 3104.5 of this title.

§ 3106.7 Approval of transfer.

§ 3106.7-1 Failure to qualify.

No transfer of record title or of operating rights (sublease) shall be approved if the transferee or any other parties in interest are not qualified to hold the transferred interest(s), or if the bond, should one be required, is insufficient. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

§ 3106.7-2 Continuing responsibility.

The transferor and its surety shall continue to be responsible for the performance of all obligations under the lease until a transfer of record title or of operating rights (sublease) is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as though no such transfer had been filed for approval. After approval of the transfer of record title, the transferee and its surety shall be responsible for the performance of all lease obligations, notwithstanding any terms in the transfer to the contrary. When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

§ 3106.7-3 Lease account status.

A transfer of record title or of operating rights (sublease) in a producing lease shall not be approved unless the lease account is in good standing.

§ 3106.7-4 Effective date of transfer.

The signature of the authorized officer on the official form shall constitute approval of the transfer of record title or of operating rights (sublease) which shall take effect as of the first day of the lease month following the date of filing in the proper BLM office of all documents and statements required by this subpart and an appropriate bond, if one is required.

§ 3106.7-5 Effect of transfer.

A transfer of record title to 100 percent of a portion of the lease segregates the transferred portion and the retained portion into separate leases. Each resulting lease retains the anniversary date and the terms and conditions of the original lease. A transfer of an undivided record title interest or a transfer of operating rights (sublease) shall not segregate the transferred and retained portions into separate leases.

§ 3106.8 Other types of transfers.

§ 3106.8-1 Heirs and devisees.

(a) If an offeror, applicant, lessee or transferee dies, his/her rights shall be transferred to the heirs, devisees, executor or administrator of the estate, as appropriate, upon the filing of a statement that all parties are qualified to hold a lease in accordance with subpart 3102 of this title. No filing fee is required. A bond rider or replacement bond may be required for any bond(s) previously furnished by the decedent.

(b) Any ownership or interest otherwise forbidden by the regulations in this group which may be acquired by descent, will, judgement or decree may be held for a period not to exceed 2 years after its acquisition. Any such forbidden ownership or interest held for a period of more than 2 years after acquisition shall be subject to cancellation.

§ 3106.8-2 Change of name.

A change of name of a lessee shall be reported to the proper BLM office. No filing fee is required. The notice of name change shall be submitted in writing and be accompanied by a list of the serial numbers of the leases affected by the name change. If a bond(s) has been furnished, change of name may be made by surety consent or a rider to the original bond or by a replacement bond.

§ 3106.8-3 Corporate merger.

Where a corporate merger affects leases situated in a State where the transfer of property of the dissolving corporation to the surviving corporation is accomplished by operation of law, no transfer of any affected lease interest is required. A notification of the merger shall be furnished with a list, by serial number, of all lease interests affected. No filing fee is required. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations may be required by the authorized officer as a prerequisite to recognition of the merger.

Subpart 3107—Continuation, Extension or Renewal

§ 3107.1 Extension by drilling.

Any lease on which actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at the end of the primary term or any lease which is part of an approved communitization agreement or cooperative or unit plan of development or operation upon which such drilling takes place, shall be extended for 2 years subject to the rental being timely paid as required by § 3103.2 of this title, and subject to the provisions of § 3105.2-3 and § 3186.1 of this title, if applicable. Actual drilling operations shall be conducted in a manner that anyone seriously looking for oil or gas could be expected to make in that particular area, given the existing knowledge of geologic and other pertinent facts. In drilling a new well on a lease or for the benefit of a lease under the terms of an approved agreement or plan, it shall be taken to a depth sufficient to penetrate at least 1 formation recognized in the area as potentially productive of oil or gas, or where an existing well is reentered, it shall be taken to a depth sufficient to penetrate at least 1 new and deeper formation recognized in the area as potentially productive of oil or gas. The authorized officer may determine that further drilling is unwarranted or impracticable.

[48 FR 33662, July 22, 1983, as amended at 49 FR 2113, Jan. 18, 1984; 53 FR 17357, May 16, 1988; 53 FR 22839, June 17, 1988]

§ 3107.2 Production.

§ 3107.2-1 Continuation by production.

A lease shall be extended so long as oil or gas is being produced in paying quantities.

§ 3107.2-2 Cessation of production.

A lease which is in its extended term because of production in paying quantities shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction. The 60-day period commences upon receipt of notification from the authorized officer that the lease is not capable of production in paying quantities.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3107.2-3 Leases capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the lease in production within a period of not less than 60 days as specified by the authorized officer after receipt of notice by certified mail from the authorized officer to do so. Such production shall be continued unless and until suspension of production is granted by the authorized officer.

[48 FR 33662, July 22, 1983, as amended at 53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3107.3 Extension for terms of cooperative or unit plan.

§ 3107.3-1 Leases committed to plan.

Any lease or portion of a lease, except as described in § 3107.3-3 of this title, committed to a cooperative or unit plan that contains a general provision for allocation of oil or gas shall continue in effect so long as the lease or portion thereof remains subject to the plan: *Provided*, That there is production of oil or gas in paying quantities under the plan prior to the expiration date of such lease.

§ 3107.3-2 Segregation of leases committed in part.

Any lease committed after July 29, 1954, to any cooperative or unit plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan, the other lands not committed to the plan. The segregated lease covering the nonunitized portion of the lands shall continue in force and effect for the term of the lease or for 2 years from the date of segregation, whichever is longer. However, for any lease segregated from a unit, if the public interest requirement for the unit is not satisfied, such segregation shall be declared invalid by the authorized officer. Further, the segregation shall be conditioned to state that no operations shall be approved on the segregated portion of the lease past the expiration date of the original lease until the public interest requirement of the unit has been satisfied.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988]

§ 3107.3-3 20-year lease or any renewal thereof.

Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

§ 3107.4 Extension by elimination.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the Act and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease or for 2 years after its elimination from the plan or agreement or after the termination of the plan or agreement, whichever is longer, and for so long thereafter as oil or gas is produced in paying quantities. No lease shall be extended if the public interest requirement for an approved cooperative or unit plan or a communitization agreement has not been satisifed as determined by the authorized officer.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988]

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§ 3107.5 Extension of leases segregated by assignment.

§ 3107.5-1 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for 2 years after the date of first discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

§ 3107.5-2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term shall continue in effect for 2 years after the effective date of assignment, provided the parent lease was issued prior to September 2, 1960.

§ 3107.5-3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for 2 years after the effective date of assignment and for so long thereafter as oil or gas is produced in paying quantities.

§ 3107.6 Extension of reinstated leases.

Where a reinstatement of a terminated lease is granted under § 3108.2 of this title and the authorized officer finds that the reinstatement will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of such lease for a period sufficient to give the lessee such an opportunity. Any extension shall be subject to the following conditions:

(a) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(b) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition, but in no event for more than 2 years from the date the reinstatement is authorized and so long thereafter as oil or gas is produced in paying quantities.

[48 FR 33662, July 22, 1983, as amended at 49 FR 30448, July 30, 1984; 53 FR 17357, May 16, 1988]

§ 3107.7 Exchange leases: 20-year term.

Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease shall be issued for a primary term of 5 years. An application to exchange a lease for a new lease shall be filed, in triplicate, by the lessee at the proper BLM office, shall show full compliance by the applicant with the terms of the lease and applicable regulations, and shall be accompanied by a nonrefundable application fee of $75. Execution of the exchange lease by the applicant is certification of compliance with § 3102.5 of this title.

[48 FR 33662, July 22, 1983, as amended at 53 FR 22840, June 17, 1988]

§ 3107.8 Renewal leases.

§ 3107.8-1 Requirements.

(a) Twenty year leases and renewals thereof may be renewed for successive terms of 10 years. Any application for renewal of a lease shall be made by the lessee, and may be joined in or consented to by the operator. The application shall show whether all monies due the United States have been paid and whether operations under the lease have been conducted in compliance with the applicable regulations.

(b) The applicant or his/her operator shall furnish, in triplicate, with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration.

[48 FR 33662, July 22, 1983, as amended at 53 FR 22840, June 17, 1988]

§ 3107.8-2 Application.

An application to renew shall be filed, in triplicate, in the proper BLM office at least 90 days, but not more than 6 months, prior to the expiration of its term and shall be accompanied by a nonrefundable filing fee of $75.

§ 3107.8-3 Approval.

(a) Copies of the renewal lease, in triplicate, dated the first day of the month following the month in which the original lease terminated, shall be forwarded to the lessee for execution. Upon receipt of the executed lease forms, which constitutes certification of compliance with § 3102.5 of this title, and any required bond, the authorized officer shall execute the lease and deliver 1 copy to the lessee.

(b) If overriding royalties and payments out of production or similar interests in excess of 5 percent of gross production constitute a burden to lease operations that will retard, or impair, or cause premature abandonment, the lease application shall be suspended until overriding royalties and payments out of production or similar interests are reduced to not more then 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon, a final decision will be rendered by the Department, outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production and an opportunity shall be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal shall be denied.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3107.9 Other types.

§ 3107.9-1 Payment of compensatory royalty.

The payment of compensatory royalty shall extend the term of any lease for the period during which such compensatory royalty is paid and for a period of 1 year from the discontinuance of such payments.

§ 3107.9-2 Subsurface storage of oil and gas.

See § 3105.5-4 of this title.

Subpart 3108—Relinquishment, Termination, Cancellation

§ 3108.1 Relinquishments.

A lease or any legal subdivision thereof may be surrendered by the record title holder or the holder's duly authorized agent by filing a written relinquishment, in the proper BLM office. A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and surety to make payments of all accrued rentals and royalties, to place all wells on the lands to be relinquished in condition for suspension by authorized shut-in or abandonment, and to complete reclamation of the leased lands or surface waters adversely affected by lease operations in a timely manner after abandonment or cessation of oil and gas operations on the lease, in accordance with the regulations and the terms of the lease.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3108.2 Termination by operation of law and reinstatement.

§ 3108.2-1 Automatic termination.

(a) Except as provided in paragraph (b) of this section, any lease on which there is no well capable of producing oil or gas in paying quantities shall automatically terminate by operation of law (30 U.S.C. 188) if the lessee fails to pay the rental at the designated Service office on or before the anniversary date of such lease. However, if the designated Service office is closed on the anniversary date, a rental payment received on the next day the Service office is open to the public shall be considered as timely made.

(b) If the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in a bill rendered by the designated Service office, or decision rendered by the authorized officer, and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency shall be considered nominal if it is not more than $100 or more than 5 percent of the total payment due, whichever is less. The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office. If the payment required by the Notice is not paid within the time allowed, the lease shall have terminated by operation of law as of its anniversary date.

[48 FR 33662, July 22, 1983, as amended at 49 FR 11637, Mar. 27, 1984; 49 FR 30448, July 30, 1984; 53 FR 17357, May 16, 1988]

§ 3108.2-2 Reinstatement at existing rental and royalty rates: Class I reinstatements.

(a) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated for failure to pay on or before the anniversary date the full amount of rental due, provided that:

(1) Such rental was paid or tendered within 20 days after the anniversary date; and

(2) It is shown to the satisfaction of the authorized officer that the failure to timely submit the full amount of the rental due was either justified or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence shall include a rental payment which is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and

(3) A petition for reinstatement, together with a nonrefundable filing fee of $25 and the required rental, including any back rental which has accrued from the date of the termination of the lease, is filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental. If a terminated lease becomes productive prior to the time the lease is reinstated, all required royalty that has accrued shall be paid to the Service.

(b) The burden of showing that the failure to pay on or before the anniversary date was justified or not due to lack of reasonable diligence shall be on the lessee.

(c) Under no circumstances shall a terminated lease be reinstated if:

(1) A valid oil and gas lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by that terminated lease; or

(2) The oil and gas interests of the United States in the lands have been disposed of or otherwise have become unavailable for leasing.

(d) The authorized officer shall not issue a lease for lands which have been covered by a lease which terminated automatically until 90 days after the date of termination.

[49 FR 30448, July 30, 1984, as amended at 53 FR 17357, May 16, 1988]

§ 3108.2-3 Reinstatement at higher rental and royalty rates: Class II reinstatements.

(a) The authorized officer may, if the requirements of this section are met, reinstate an oil and gas lease which was terminated by operation of law for failure to pay rental timely when the rental was not paid or tendered within 20 days of the termination date and it is shown to the satisfaction of the authorized officer that such failure was justified or not due to a lack of reasonable diligence, or no matter when the rental was paid, it is shown to the satisfaction of the authorized officer that such failure was inadvertent.

(b)(1) For leases that terminate on or after January 12, 1983, consideration may be given to reinstatement if the required back rental and royalty at the increased rates accruing from the date of termination, together with a petition for reinstatement, are filed on or before the earlier of:

(i) Sixty days after the receipt of the Notice of Termination sent to the lessee of record; or

(ii) Fifteen months after termination of the lease.

(2) After determining that the requirements for filing of the petition for reinstatement have been timely met, the authorized officer may reinstate the lease if:

(i) No valid lease has been issued prior to the filing of the petition for reinstatement affecting any of the lands covered by the terminated lease, whether such lease is still in effect or not;

(ii) The oil and gas interests of the United States in the lands have not been disposed of or have not otherwise become unavailable for leasing;

(iii) Payment of all back rentals and royalties at the rates established for the reinstated lease, including the release to the United States of funds being held in escrow, as appropriate;

(iv) An agreement has been signed by the lessee and attached to and made a part of the lease specifying future rentals at the applicable rates specified for reinstated leases in § 3103.2-2 of this title and future royalties at the rates set in § 3103.3-1 of this title for all production removed or sold from such lease or shared by such lease from production allocated to the lease by virtue of its participation in a unit or communitization agreement or other form of approved joint development agreement or plan;

(v) A notice of the proposed reinstatement of the terminated lease and the terms and conditions of reinstatement has been published in the **Federal Register** at least 30 days prior to the date of reinstatement for which the lessee shall reimburse the Bureau for the full costs incurred in the publishing of said notice; and

(vi) The lessee has paid the Bureau a nonrefundable administrative fee of $500.

(c) The authorized officer shall not, after the receipt of a petition for reinstatement, issue a new lease affecting any of the lands covered by the terminated lease until all action on the petition is final.

(d) The authorized officer shall furnish to the Chairpersons of the Committee on Interior and Insular Affairs of the House of Representatives and of the Committee on Energy and Natural Resources of the Senate, at least 30 days prior to the date of reinstatement, a copy of the notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the authorized officer considers significant in making the determination to reinstate.

(e) If the authorized officer reinstates the lease, the reinstatement shall be as of the date of termination, for the unexpired portion of the original lease or any extension thereof remaining on the date of termination, and so long thereafter as oil or gas is produced in paying quantities. Where a lease is reinstated under this section and the authorized officer finds that the reinstatement of such lease either (1) occurs after the expiration of the primary term or any extension thereof, or (2) will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may extend the term of the reinstated lease for such period as determined reasonable, but in no event for more than 2 years from the date of the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(f) The authorized officer may, either in acting on a petition for reinstatement or in response to a request filed after reinstatement, or both, reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes, if he/she determines there are either economic or other circumstances which could cause undue economic hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the lands covered by the lease after the rental had become due and had not been paid; or if the authorized officer determines it is equitable to do so for any other reason.

[49 FR 30449, July 30, 1984]

§ 3108.2–4 Conversion of unpatented oil placer mining claims: Class III reinstatements.

(a) For any unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, and has been or is deemed after January 12, 1983, conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act (43 U.S.C. 1744), and it is shown to the satisfaction of the authorized officer that such failure was inadvertent, justifiable or not due to lack of reasonable diligence on the part of the owner, the authorized officer may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease consistent with the provisions of section 17(e) of the Act (30 U.S.C. 226(e)). The effective date of any lease issued under this section shall be from the statutory date that the claim was deemed conclusively abandoned.

(b) The authorized officer may issue a noncompetitive oil and gas lease if a petition has been filed in the proper BLM office for the issuance of a noncompetitive oil and gas lease accompanied by the required rental and royalty, including back rental and royalty accruing, at the rates specified in §§ 3103.2-2 and 3103.3-1 of this title, for any claim deemed conclusively abandoned after January 12, 1983. The petition shall have been filed on or before the 120th day after the final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim.

(c) The authorized officer shall not issue a noncompetitive oil and gas lease under this section if a valid oil and gas lease has been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of the petition for issuance of a noncompetitive oil and gas lease.

(d) After the filing of a petition for issuance of a noncompetitive oil and gas lease covering an abandoned oil placer claim, the authorized officer shall not issue any new lease affecting any lands covered by such petition until all action on the petition is final.

(e) Any noncompetitive lease issued under this section shall include:

(1) Terms and conditions for the payment of rental in accordance with § 3103.2-2(j) of this title. Payment of back rentals accruing from the date of abandonment of the oil placer mining claim, at the rental set by the authorized officer, shall be made prior to the lease issuance.

(2) Royalty rates set in accordance with § 3103.3-1 of this title. Royalty shall be paid at the rate established by the authorized officer on all production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the date the claim was deemed conclusively abandoned prior to the lease issuance.

(f) Noncompetitive oil and gas leases issued under this section shall be subject to all regulations in part 3100 of this title except for those terms and conditions mandated by Title IV of the Federal Oil and Gas Royalty Management Act.

(g) A notice of the proposed conversion of the oil placer mining claim into a noncompetitive oil and gas lease, including the terms and conditions of conversion, shall be published in the FEDERAL REGISTER at least 30 days prior to the issuance of a noncompetitive oil and gas lease. The mining claim owner shall reimburse the Bureau for the full costs incurred in the publishing of said notice.

(h) The mining claim owner shall pay the Bureau a nonrefundable administrative fee of $500 prior to the issuance of the noncompetitive lease.

(i) The authorized officer may, either in acting on a petition to issue a noncompetitive oil and gas lease or in response to a request filed after issuance, or both, reduce the royalty in such lease, if he/she determines there are either economic or other circumstances which could cause undue economic hardship or premature termination of production.

[49 FR 30449, July 30, 1984, as amended at 53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3108.3 Cancellation.

(a) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, the lease may be canceled by the Secretary, if the leasehold does not contain a well capable of production of oil or gas in paying quantities, or if the lease is not committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities. The lease may be canceled only after notice to the lessee in accordance with section 31(b) of the Act and only if default continues for the period prescribed in that section after service of 30 days notice of failure to comply.

(b) Whenever the lessee fails to comply with any of the provisions of the law, the regulations issued thereunder, or the lease, and if the leasehold contains a well capable of production of oil or gas in paying quantities, or if the lease is committed to an approved cooperative or unit plan or communitization agreement that contains a well capable of production of unitized substances in paying quantities, the lease may be canceled only by judicial proceedings in the manner provided by section 31(a) of the Act.

(c) If any interest in any lease is owned or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of the act, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, only by judicial proceedings in the manner provided by section 27(h)(1) of the Act.

(d) Leases shall be subject to cancellation if improperly issued.

[48 FR 33662, July 22, 1983, as amended at 53 FR 22840, June 17, 1988; 53 FR 31868, Aug. 22, 1988]

§ 3108.4 Bona fide purchasers.

A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers shall be charged with constructive notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease. Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation by a predecessor of any provisions of the act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a bona fide purchaser.

[48 FR 33662, July 22, 1983; 48 FR 39225, Aug. 30, 1983, as amended at 53 FR 17357, May 16, 1988]

§ 3108.5 Waiver or suspension of lease rights.

If, during any proceeding with respect to a violation of any provisions of the regulations in Groups 3000 and 3100 of this title or the act, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

[53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

Subpart 3109—Leasing Under Special Acts

§ 3109.1 Rights-of-way.

§ 3109.1-1 Generally.

The Act of May 21, 1930 (30 U.S.C. 301-306), authorizes either the leasing of oil and gas deposits under railroad and other rights-of-way to the owner of the right-of-way or the entering of a compensatory royalty agreement with adjoining landowners. This authority shall be exercised only with respect to railroad rights-of-way and easements issued pursuant either to the Act of March 3, 1875 (43 U.S.C. 934 *et seq.*), or pursuant to earlier railroad right-of-way statutes, and with respect to rights-of-way and easements issued pursuant to the Act of March 3, 1891 (43 U.S.C. 946 *et seq.*). The oil and gas underlying any other right-of-way or easement is included within any oil and gas lease issued pursuant to the Act which covers the lands within the right-of-way, subject to the limitations on use of the surface, if any, set out in the statute under which, or permit by which, the right-of-way or easement was issued, and such oil and gas shall not be leased under the Act of May 21, 1930.

§ 3109.1-2 Application.

No approved form is required for an application to lease lands in a right-of-way. Applications shall be filed in the proper BLM office. Such applications shall be filed by the owner of the right-of-way or by his/her transferee and be accompanied by a nonrefundable filing fee of $75, and if filed by a transferee, by a duly executed transfer of the right to lease. The application shall detail the facts as to the ownership of the right-of-way, and of the transfer if the application is filed by a transferee; the development of oil or gas in adjacent or nearby lands, the location and depth of the wells, the production and the probability of drainage of the deposits in the right-of-way. A description by metes and bounds of the right-of-way is not required but each legal subdivision through which a portion of the right-of-way desired to be leased extends shall be described.

[53 FR 17357, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3109.1-3 Notice.

After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on its own motion, the authorized officer shall serve notice on the owner or lessee of the oil and gas rights of the adjoining lands. The adjoining land owner or lessee shall be allowed a reasonable time, as provided in the notice, within which to submit a bid for the amount or percent of compensatory royalty, the owner or lessee shall pay for the extraction of the oil and gas underlying the right-of-way through wells on such adjoining lands. The owner of the right-of-way shall be given the same time period to submit a bid for the lease.

§ 3109.1-4 Award of lease or compensatory royalty agreement.

Award of lease to the owner of the right-of-way, or a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands shall be made to the bidder whose offer is determined by the authorized officer to be to the best advantage of the United States, considering the amount of royalty to be received and the better development under the respective means of production and operation.

§ 3109.1-5 Compensatory royalty agreement or lease.

(a) The lease or compensatory royalty agreement shall be on a form approved by the Director.

(b) The royalty to be charged shall be fixed by the Bureau of Land Management in accordance with the provisions of § 3103.3 of this title, but shall not be less than 12½ percent.

(c) The term of the lease shall be for a period of not more than 20 years.

§ 3109.2 Units of the National Park System.

(a) Oil and gas leasing in units of the National Park System shall be governed by 43 CFR Group 3100 and all operations conducted on a lease or permit in such units shall be governed by 43 CFR parts 3160 and 3180.

(b) Any lease or permit respecting minerals in units of the National Park System shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall only be granted upon a determination by the Regional Director that the activity permitted under the lease or permit will not have significant adverse effect upon the resources or administration of the unit pursuant to the authorizing legislation of the unit. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the unit, to preserve their use for public recreation, and to the condition that site specific approval of any activity on the lease will only be given upon concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands shall also be submitted to the Bureau of Reclamation for review.

(c) The units subject to the regulations in this part are those units of land and water which are shown on the following maps on file and available for public inspection in the office of the Director of the National Park Service and in the Superintendent's Office of each unit. The boundaries of these units may be revised by the Secretary as authorized in the Acts.

(1) Lake Mead National Recreation Area—The map identified as "boundary map, 8360-80013B, revised February 1986.

(2) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—The map identified as "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," numbered BOR-WST 1004, dated July 1963.

(3) Ross Lake and Lake Chelan National Recreation Areas—The map identified as "Proposed Management Units, North Cascades, Washington," numbered NP-CAS-7002, dated October 1967.

(4) Glen Canyon National Recreation Area—the map identified as "boundary map, Glen Canyon National Recreation Area," numbered GLC-91,006, dated August 1972.

(d) The following excepted units shall not be open to mineral leasing:

(1) *Lake Mead National Recreation Area.* (i) All waters of Lakes Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum surface elevation;

(ii) All lands within the unit of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands outside of resource utilization zones as designated by the Superintendent on the map (602-2291B, dated October 1987) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent.

(2) *Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area.* (i) All waters of Whiskeytown Lake and all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation;

(ii) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611-20,004B, dated April 1979, entitled "Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area." This map is available for public inspection in the Office of the Superintendent;

(iii) All lands within section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian.

(3) *Ross Lake and Lake Chelan National Recreation Areas.* (i) All of Lake Chelan National Recreation Area;

(ii) All lands within ½ mile of Gorge, Diablo and Ross Lakes measured from the shoreline at maximum surface elevation;

(iii) All lands proposed for or designated as wilderness;

(iv) All lands within ½ mile of State Highway 20;

(v) Pyramid Lake Research Natural Area and all lands within ½ mile of its boundaries.

(4) *Glen Canyon National Recreation Area.* Those units closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and re-

source utilization zone as shown on the map numbered 80,022A, dated March 1980, entitled "Mineral Management Plan—Glen Canyon National Recreation Area." This map is available for public inspection in the Office of the Superintendent and the office of the State Directors, Bureau of Land Management, Arizona and Utah.

[48 FR 33662, July 22, 1983, as amended at 53 FR 17358, May 16, 1988; 53 FR 22840, June 17, 1988]

§ 3109.2-1 Authority to lease. [Reserved]

§ 3109.2-2 Area subject to lease. [Reserved]

§ 3109.3 Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

Section 6 of the Act of November 8, 1965 (Pub. L. 89-336), authorizes the Secretary to permit the removal of oil and gas from lands within the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area in accordance with the act or the Mineral Leasing Act for Acquired Lands. Subject to the determination by the Secretary of Agriculture that removal will not have significant adverse effects on the purposes of the Central Valley project or the administration of the recreation area.

[48 FR 33662, July 22, 1983. Redesignated at 53 FR 22840, June 17, 1988]

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

Sec.

3110.1 Lands available for noncompetitive offer and lease.
3110.2 Priority.
3110.3 Lease terms.
3110.3-1 Duration of lease.
3110.3-2 Dating of leases.
3110.3-3 Lease offer size.
110.4 Requirements for offer.
110.5 Description of lands in offer.
110.5-1 Parcel number description.
110.5-2 Public domain.
110.5-3 Acquired lands.
110.5-4 Accreted lands.
10.5-5 Conflicting descriptions.
10.6 Withdrawal of offer.
10.7 Action on offer.
3110.8 Amendment to lease.
3110.9 Future interest offers.
3110.9-1 Availability.
3110.9-2 Form of offer.
3110.9-3 Fractional present and future interest.
3110.9-4 Future interest terms and conditions.

AUTHORITY: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

SOURCE: 53 FR 22840, June 17, 1988, unless otherwise noted.

Subpart 3110—Noncompetitive Leases

§ 3110.1 Lands available for noncompetitive offer and lease.

(a) *Offer.* (1) Effective June 12, 1988, through January 2, 1989, noncompetitive lease offers may be filed only for lands available under § 3110.1(b) of this title. Noncompetitive lease offers filed after December 22, 1987, and prior to June 12, 1988, for lands available for filing under § 3110.1(a) of this title shall receive priority. Such offers shall be exposed to competitive bidding under subpart 3120 of this title and if no bid is received, a noncompetitive lease shall be issued all else being regular. After January 2, 1989, noncompetitive lease offers may be filed on unleased lands, except for:

(i) Those lands which are in the one-year period commencing upon the expiration, termination, relinquishment, or cancellation of the leases containing the lands; and

(ii) Those lands included in a Notice of Competitive Lease Sale or a List of Lands Available for Competitive Nominations. Neither exception is applicable to lands available under § 3110.1(b) of this title.

(2) Noncompetitive lease offers may be made pursuant to an opening order or other notice and shall be subject to

all provisions and procedures stated in such order or notice.

(3) No noncompetitive lease may issue for any lands unless and until they have satisfied the requirements of § 3110.1(b) of this title.

(b) *Lease.* Only lands that have been offered competitively under subpart 3120 of this title, and for which no bid has been received, shall be available for noncompetitive lease. Such lands shall become available for a period of 2 years beginning on the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, or the first business day following the posting of the Notice of Competitive Lease Sale, and ending on that same day 2 years later. A lease may be issued from an offer properly filed any time within the 2-year noncompetitive leasing period.

[53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3110.2 Priority.

(a) Offers filed for lands available for noncompetitive offer or lease, as specified in §§ 3110.1(a)(1) and 3110.1(b) of this title, shall receive priority as of the date and time of filing as specified in § 1821.2-3(a) of this title, except that all noncompetitive offers shall be considered simultaneously filed if received in the proper BLM office any time during the first business day following the last day of the competitive oral auction, or when formal nominations have been requested as specified in § 3120.3-1 of this title, on the first business day following the posting of the Notice of Competitive Lease Sale. An offer shall not be available for public inspection the day it is filed.

(b) If more than 1 application was filed for the same parcel in accordance with the regulations contained in former subpart 3112 of this title, and if no lease has been issued by the authorized officer prior to the effective date of these regulations, only a single priority application shall be selected from the filings. If the selected application fails to mature into a lease, the lands shall be available for offer under § 3110.1(a) of this title.

§ 3110.3 Lease terms.

§ 3110.3-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years.

[53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3110.3-2 Dating of leases.

All noncompetitive leases shall be considered issued when signed by the authorized officer. Noncompetitive leases, except future interest leases issued under § 3110.9 of this title, shall be effective as of the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Future interest leases issued under § 3110.9 of this title shall be effective as of the date the mineral interests vest in the United States.

§ 3110.3-3 Lease offer size.

(a) Lease offers for public domain minerals shall not be made for less than 640 acres or 1 full section, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within a section and there are no contiguous lands available for lease. Such public domain lease offers in Alaska shall not be made for less than 2,560 acres or 4 full contiguous sections, whichever is larger, where the lands have been surveyed under the rectangular survey system or are within an approved protracted survey, except where the offer includes all available lands within the subject section and there are no contiguous lands available for lease. Where an offer exceeds the minimum 640-acre provision of this paragraph, the offer may include less than all available lands in any given section. Cornering lands are not considered contiguous lands. This paragraph shall not apply to offers made under § 3108.2-4 of this title or where the offer is filed on an entire parcel as it was offered by the Bureau in a competitive sale during that period specified under § 3110.5-1 of this title.

(b) An offer to lease public domain or acquired lands may not include more than 10,240 acres. The lands in an offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer to lease acquired lands may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition or tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area, and such acquisition or tract number is provided in accordance with § 3110.5-3(d) of this title in lieu of any other description.

(c) If an offer exceeds the 10,240 acre maximum by not more than 160 acres, the offeror shall be granted 30 days from notice of the excess to withdraw the excess acreage from the offer, failing which the offer shall be rejected and priority lost.

§ 3110.4 Requirements for offer.

(a) An offer to lease shall be made on a current form approved by the Director, or on unofficial copies of that form in current use. For noncompetitive leases processed under § 3108.2-4 of this title, the current lease form shall be used. Copies shall be exact reproductions on 1 page of both sides of the official approved form, without additions, omissions, or other changes, or advertising. The original copy of each offer shall be typewritten or printed plainly in ink, signed in ink and dated by the offeror or the offeror's duly authorized agent, and shall be accompanied by the first year's rental and a nonrefundable filing fee of $75. The original and 2 copies of each offer to lease, with each copy showing that the original has been signed, shall be filed in the proper BLM office. A noncompetitive offer to lease a future interest applied for under "§ 3110.9" of this title shall be accompanied by a nonrefundable filing fee of $75. Where remittances for offers are returned for insufficient funds, the offer shall not obtain priority of filing until the date the remittance is properly made.

(b) Where a correction to an offer is made, whether at the option of the offeror or at the request of the authorized officer, it shall gain priority as of the date the filing is correct and complete. The priority that existed before the date the corrected offer is filed, may be defeated by an intervening offer to the extent of any conflict in such offers, except as provided under §§ 3103.2-1(a) and 3110.3-3(c) of this title.

(c) An offer shall be limited to either public domain minerals or acquired lands minerals, subject to the provisions for corrections under paragraph (b) of this section.

(d) Compliance with subpart 3102 shall be required.

(e) All offers for leases should name the United States agency from which consent to the issuance of a lease shall be obtained, or the agency that may have title records covering the ownership for the mineral interest involved, and identify the project, if any, of which the lands covered by the offer are a part.

[53 FR 22840, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3110.5 Description of lands in offer.

§ 3110.5-1 Parcel number description.

From the first day following the end of a competitive process until the end of that same month, the only acceptable description for a noncompetitive lease offer for the lands covered by that competitive process shall be the parcel number on the List of Lands Available for Competitive Nominations or the Notice of Competitive Lease Sale, whichever is appropriate. Each such offer shall contain only a single parcel. Thereafter, the description of the lands shall be made in accordance with the remainder of this section.

§ 3110.5-2 Public domain.

(a) If the lands have been surveyed under the public land rectangular survey system, each offer shall describe the lands by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands have not been surveyed under the public land rectangular system, each offer shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an official corner of the public land surveys.

(c) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(d)(1) Where offers are pending for unsurveyed lands that are subsequently surveyed or protracted before the lease issuance, the description in the lease shall be conformed to the subdivisions of the approved protracted survey or the public land survey, whichever is appropriate.

(2) The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

(e) The requirements of this section shall apply to applications for conversion of abandoned unpatented oil placer mining claims made under § 3108.2-4 of this title, except that deficiencies shall be curable.

§ 3110.5-3 Acquired lands.

(a) If the lands applied for lie within and conform to the rectangular system of public land surveys and constitute either all or a portion of the tract acquired by the United States, such lands shall be described by legal subdivision, section, township, range, and, if needed, meridian.

(b) If the lands applied for do not conform to the rectangular system of public land surveys, but lie within an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner, or a copy of the deed or other conveyance document by which the United States acquired title to the lands may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest official survey corner. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description on the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(c) If the lands applied for lie outside an area of the public land surveys and constitute the entire tract acquired by the United States, such lands shall be described as in the deed or other conveyance document by which the United States acquired title to the lands, or a copy of that document may be attached to the offer and referred to therein in lieu of redescribing the lands on the offer form. If the desired lands constitute less than the entire tract acquired by the United States, such lands shall be described by courses and distances between successive angle points tying by courses and distances into the description in the deed or other conveyance document. If a portion of the boundary of the desired lands coincides with the boundary in the deed or other conveyance document, that boundary need not be redescribed on the offer form, provided that a copy of the deed or other conveyance document upon which the coinciding description is clearly identified is attached to the offer. That portion of the description not coinciding shall be tied by description in the offer by courses and distances between successive angle points into the description in the deed or other conveyance document.

(d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, the authorized officer may allow the description in this manner in lieu of other descriptions required by this section.

(e) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offeror, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part.

3110.5-4 Accreted lands.

Where an offer includes any accreted lands, the accreted lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the tract to which the accretions appertain.

3110.5-5 Conflicting descriptions.

If there is any variation in the land description among the required copies of the official forms, the copy showing the date and time of receipt in the proper BLM office shall control.

3 FR 22840, June 17, 1988; 53 FR 31868, ug. 22, 1988]

3110.6 Withdrawal of offer.

An offer for noncompetitive lease der this subpart may be withdrawn whole or in part by the offeror. wever, a withdrawal of an offer de in accordance with § 3110.1(b) of s title may be made only if the withdrawal is received by the proper BLM office after 60 days from the date of filing of such offer. No withdrawal may be made once the lease, an amendment of the lease, or a separate lease, whichever covers the lands so described in the withdrawal, has been signed on behalf of the United States. If a public domain offer is partially withdrawn, the lands retained in the offer shall comply with § 3110.3-3(a) of this title.

§ 3110.7 Action on offer.

(a) No lease shall be issued before final action has been taken on any prior offer to lease the lands or any extension of, or petition for reinstatement of, an existing or former lease on the lands. If a lease is issued before final action, it shall be canceled, if the prior offeror is qualified to receive a lease or the petitioner is entitled to reinstatement of a former lease.

(b) The authorized officer shall not issue a lease for lands covered by a lease which terminated automatically, until 90 days after the date of termination.

(c) The United States shall indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease, by signature of the authorized officer on the current lease form. A signed copy of the lease shall be delivered to the offeror.

(d) Except as otherwise specifically provided in the regulations of this group, an offer that is not filed in accordance with the regulations in this part shall be rejected.

(e) Filing an offer on a lease form not currently in use, unless such lease form has been declared obsolete by the Director prior to the filing shall be allowed, on the condition that the offeror is bound by the terms and conditions of the lease form currently in use.

§ 3110.8 Amendment to lease.

After the competitive process has concluded in accordance with subpart 3120 of this title, if any of the lands described in a lease offer for lands available during the 2-year period are open to oil and gas filing when the offer is filed but are omitted from the lease for any reason the original lease shall be amended to include the omitted lands unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the offer with respect to such lands or the offeror elects to receive a separate lease in lieu of an amendment. Such election shall be made by submission of a signed statement of the offeror requesting a separate lease, and a new offer on the required form executed pursuant to this part describing the remaining lands in the original offer. The new offer shall have the same priority as the old offer. No new application fee is required with the new offer. The rental payment held in connection with the original offer shall be applied to the new offer. The rental and the term of the lease for the lands added by an amendment shall be the same as if the lands had been included in the original lease when it was issued. If a separate lease is issued, it shall be dated in accordance with § 3110.3-2 of this title.

§ 3110.9 Future interest offers.

§ 3110.9-1 Availability.

A noncompetitive future interest lease shall not be issued until the lands covered by the offer have been made available for competitive lease under subpart 3120 of this title. An offer made for lands that are leased competitively shall be rejected.

§ 3110.9-2 Form of offer.

An offer to lease a future interest shall be filed in accordance with this subpart, and may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought.

§ 3110.9-3 Fractional present and future interest.

Where the United States owns both a present fractional interest and a future fractional interest in the minerals in the same tract, the lease, when issued, shall cover both the present and future interests in the lands. The effective date and primary term of the present interest lease is unaffected by the vesting of a future fractional interest. The lease for the future fractional interest, when such interest vests in the United States, shall have the same primary term and anniversary date as the present fractional interest lease.

§ 3110.9-4 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any noncompetitive lease issued under this subpart, as provided in subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

Sec.
3120.1 General.
3120.1-1 Lands available for competitive leasing.
3120.1-2 Requirements.
3120.1-3 Protests and appeals.
3120.2 Lease terms.
3120.2-1 Duration of lease.
3120.2-2 Dating of leases.
3120.2-3 Lease size.
3120.3 Nomination process.
3120.3-1 General.
3120.3-2 Filing of a nomination for competitive leasing.

Sec.
3120.3-3 Minimum bid and rental remittance.
3120.3-4 Withdrawal of a nomination.
3120.3-5 Parcels receiving nominations.
3120.3-6 Parcels not receiving nominations.
3120.3-7 Refund.
3120.4 Notice of competitive lease sale.
3120.4-1 General.
3120.4-2 Posting of notice.
3120.5 Competitive sale.
3120.5-1 Oral auction.
3120.5-2 Payments required.
3120.5-3 Award of lease.
3120.6 Parcels not bid on at auction.
3120.7 Future interest.
3120.7-1 Nomination to make lands available for competitive lease.
3120.7-2 Future interest terms and conditions.
3120.7-3 Compensatory royalty agreements.

AUTHORITY: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

SOURCE: 53 FR 22843, June 17, 1988, unless otherwise noted.

Subpart 3120—Competitive Leases

§ 3120.1 General.

§ 3120.1-1 Lands available for competitive leasing.

All lands available for leasing shall be offered for competitive bidding under this subpart, including but not limited to:

(a) Lands in oil and gas leases that have terminated, expired, been cancelled or relinquished.

(b) Lands for which authority to lease has been delegated from the General Services Administration.

(c) If, in proceeding to cancel a lease, interest in a lease, option to acquire a lease or an interest therein, acquired in violation of any of the provisions of the act, an underlying lease, interest or option in the lease is cancelled or forfeited to the United States and there are valid interests therein that are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease, interest, or option shall be sold to the highest responsible qualified bidder by competitive bidding under this subpart, subject to all outstanding valid interests therein and valid options pertaining thereto. If less than the whole interest in the lease, interest, or option is cancelled or forfeited, such partial interest shall likewise be sold by competitive bidding. If no satisfactory bid is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold in accordance with section 27 of the Act by such other methods as the authorized officer deems appropriate, but on terms no less favorable to the United States than those of the best competitive bid received. Interest in outstanding leases(s) so sold shall be subject to the terms and conditions of the existing lease(s).

(d) Lands which are otherwise unavailable for leasing but which are subject to drainage (protective leasing).

(e) Lands included in any expression of interest or noncompetitive offer, except offers properly filed within the 2-year period provided under § 3110.1(b) of this title, submitted to the authorized officer.

(f) Lands selected by the authorized officer.

§ 3120.1-2 Requirements.

(a) Each proper BLM Sate office shall hold sales at least quarterly if lands are available for competitive leasing.

(b) Lease sales shall be conducted by a competitive oral bidding process.

(c) The national minimum acceptable bid shall be $2 per acre or fraction thereof payable on the gross acreage, and shall not be prorated for any lands in which the United States owns a fractional interest.

§ 3120.1-3 Protests and appeals.

No action pursuant to the regulations in this subpart shall be suspended under § 4.21(a) of this title due to an appeal from a decision by the authorized officer to hold a lease sale. The authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a Notice of Competitive Lease Sale.

Only the Assistant Secretary for Land and Minerals Management may suspend a lease sale for good and just cause after reviewing the reason(s) for an appeal.

§ 3120.2 Lease terms.

§ 3120.2-1 Duration of lease.

Competitive leases shall have a primary term of 5 years.

§ 3120.2-2 Dating of leases.

All competitive leases shall be considered issued when signed by the authorized officer. Competitive leases, except future interest leases issued under § 3120.7 of this title, shall be effective as of the first day of the month following the date the leases are signed on behalf of the United States. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. Leases for future interest shall be effective as of the date the mineral interests vest in the United States.

§ 3120.2-3 Lease size.

Lands shall be offered in leasing units of not more than 2,560 acres outside Alaska, or 5,760 acres within Alaska, which shall be as nearly compact in form as possible.

§ 3120.3 Nomination process.

The Director may elect to implement the provisions contained in §§ 3120.3-1 through 3120.3-7 of this title after review of any comments received during a period of not less than 30 days following publication in the FEDERAL REGISTER of notice that implementation of those sections is being considered.

§ 3120.3-1 General.

The Director may elect to accept nominations requiring submission of the national minimum acceptable bid, as set forth in this section, as part of the competitive process required by the act, or elect to accept informal expressions of interest. A List of Lands Available for Competitive Nominations may be posted in accordance with § 3120.4 of this title, and nominations in response to this list shall be made in accordance with instructions contained therein and on a form approved by the Director. Those parcels receiving nominations shall be included in a Notice of Competitive Lease Sale, unless the parcel is withdrawn by the Bureau.

§ 3120.3-2 Filing of a nomination for competitive leasing.

Nominations filed in response to a List of Lands Available for Competitive Nominations and on a form approved by the Director shall:

(a) Include the nominator's name and personal or business address. The name of only one citizen, association or partnership, corporation or municipality shall appear as the nominator. All communications relating to leasing shall be sent to that name and address, which shall constitute the nominator's name and address of record;

(b) Be completed, signed in ink and filed in accordance with the instructions printed on the form and the regulations in this subpart. Execution of the nomination form shall constitute a legally binding offer to lease by the nominator, including all terms and conditions;

(c) Be filed within the filing period and in the BLM office specified in the List of Lands Available for Competitive Nominations. A nomination shall be unacceptable and shall be returned with all moneys refunded if it has not been completed and timely filed in accordance with the instructions on the form or with the other requirements in this subpart; and

(d) Be accompanied by a remittance sufficient to cover the national minimum acceptable bid, the first year's rental per acre or fraction thereof, and the administrative fee as set forth in § 3120.5-2(b) of this title for each parcel nominated on the form.

[53 FR 22843, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3120.3–3 Minimum bid and rental remittance.

Nominations filed in response to a List of Lands Available for Competitive Nominations shall be accompanied by a single remittance. Failure to submit either a separate remittance with each form or an amount sufficient to cover all the parcels nominated on each form shall cause the entire filing to be deemed unacceptable with all moneys refunded.

§ 3120.3–4 Withdrawal of a nomination.

A nomination shall not be withdrawn, except by the Bureau for cause, in which case all moneys shall be refunded.

§ 3120.3–5 Parcels receiving nominations.

Parcels which receive nominations shall be included in a Notice of Competitive Lease Sale. The Notice shall indicate which parcels received multiple nominations in response to a List of Lands Available for Competitive Nominations, or parcels which have been withdrawn by the Bureau.

§ 3120.3–6 Parcels not receiving nominations.

Lands included in the List of Lands Available for Competitive Nominations which are not included in the Notice of Competitive Lease Sale because they were not nominated, unless they were withdrawn by the Bureau, shall be available for a 2-year period, for noncompetitive leasing as specified in the List.

§ 3120.3–7 Refund.

The minimum bid, first year's rental and administrative fee shall be refunded to all nominators who are unsuccessful at the oral auction.

§ 3120.4 Notice of competitive lease sale.

§ 3120.4–1 General.

(a) The lands available for competitive lease sale under this subpart shall be described in a Notice of Competitive Lease Sale.

(b) The time, date, and place of the competitive lease sale shall be stated in the Notice.

(c) The notice shall include an identification of, and a copy of, stipulations applicable to each parcel.

§ 3120.4–2 Posting of notice.

At least 45 days prior to conducting a competitive auction, lands to be offered for competitive lease sale, as included in a List of Lands Available for Competitive Nominations or in a Notice of Competitive Lease Sale, shall be posted in the proper BLM office having jurisdiction over the lands as specified in § 1821.2-1(d) of this title, and shall be made available for posting to surface managing agencies having jurisdiction over any of the included lands.

§ 3120.5 Competitive sale.

§ 3120.5–1 Oral auction.

(a) Parcels shall be offered by oral bidding. The existence of a nomination accompanied by the national minimum acceptable bid shall be announced at the auction for the parcel.

(b) A winning bid shall be the highest oral bid by a qualified bidder, equal to or exceeding the national minimum acceptable bid. The decision of the auctioneer shall be final.

(c) Two or more nominations on the same parcel when the bids are equal to the national minimum acceptable bid, with no higher oral bid being made, shall be returned with all moneys refunded. If the Bureau reoffers the parcel, it shall be reoffered only competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received at an oral auction.

§ 3120.5–2 Payments required.

(a) Payments shall be made in accordance with § 3103.1-1 of this title.

(b) Each winning bidder shall submit, by the close of official business hours, or such other time as may be specified by the authorized officer, on the day of the sale for the parcel:

(1) The minimum bonus bid of $2 per acre or fraction thereof;

(2) The total amount of the first year's rental; and

(3) An administrative fee of $75 per parcel.

(c) The winning bidder shall submit the balance of the bonus bid to the proper BLM office within 10 working days after the last day of the oral auction.

§ 3120.5-3 Award of lease.

(a) A bid shall not be withdrawn and shall constitute a legally binding commitment to execute the lease bid form and accept a lease, including the obligation to pay the bonus bid, first year's rental, and administrative fee. Execution by the high bidder of a competitive lease bid form approved by the Director constitutes certification of compliance with subpart 3102 of this title, shall constitute a binding lease offer, including all terms and conditions applicable thereto, and shall be required when payment is made in accordance with § 3120.5-2(b) of this title. Failure to comply with § 3120.5-2(c) of this title shall result in rejection of the bid and forfeiture of the monies submitted under § 3120.5-2(b) of this title.

(b) A lease shall be awarded to the highest responsible qualified bidder. A copy of the lease shall be provided to the lessee after signature by the authorized officer.

(c) If a bid is rejected, the lands shall be reoffered competitively under this subpart with any noncompetitive offer filed under § 3110.1(a) of this title retaining priority, provided no bid is received in an oral auction.

(d) Issuance of the lease shall be consistent with § 3110.7 (a) and (b) of this title.

§ 3120.6 Parcels not bid on at auction.

Lands offered at the oral auction that receive no bids shall be available for filing for noncompetitive lease for a 2-year period beginning the first business day following the auction at a time specified in the Notice of Competitive Lease Sale.

§ 3120.7 Future interest.

§ 3120.7-1 Nomination to make lands available for competitive lease.

A nomination for a future interest lease shall be filed in accordance with this subpart.

§ 3120.7-2 Future interest terms and conditions.

(a) No rental or royalty shall be due to the United States prior to the vesting of the oil and gas rights in the United States. However, the future interest lessee shall agree that if, he/she is or becomes the holder of any present interest operating rights in the lands:

(1) The future interest lessee transfers all or a part of the lessee's present oil and gas interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with subpart 3106 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest, and

(2) The future interest lessee's present lease interests are relinquished, cancelled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(b) Upon vesting of the oil and gas rights in the United States, the future interest lease rental and royalty shall be as for any competitive lease issued under this subpart, as provided in subpart 3103 of this title, and the acreage shall be chargeable in accordance with § 3101.2 of this title.

§ 3120.7-3 Compensatory royalty agreements.

The terms and conditions of compensatory royalty agreements involving acquired lands in which the United States owns a future or fractional interest shall be established on an individual case basis. Such agreements shall be required when leasing is not possible in situations where the interest of the United States in the oil and gas deposit includes both a present and a future fractional interest in the same tract containing a producing well.

[53 FR 22843, June 17, 1988]

PART 3130—OIL AND GAS LEASING: NATIONAL PETROLEUM RESERVE, ALASKA

NOTE: The information collection requirements contained in part 3130 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0067. The information is being collected to allow the authorized officer to determine if the bidder is qualified to hold a lease. The information will be used in making that determination. The obligation to respond is required to obtain a benefit.

Subpart 3130—Oil and Gas Leasing, National Petroleum Reserve, Alaska: General

Sec.

3130.0-1 Purpose.
3130.0-2 Policy.
3130.0-3 Authority.
3130.0-5 Definitions.
3130.0-7 Cross references. [Reserved]
3130.1 Attorney General review.
3130.2 Limitation on time to institute suit to contest a Secretary's decision.
3130.3 Drainage.
3130.4 Leasing: General.
3130.4-1 Tract size.
3130.4-2 Lease term.
3130.5 Bona fide purchasers.
3130.6 Leasing maps and land descriptions.
3130.6-1 Leasing maps.
3130.6-2 Land descriptions.

Subpart 3131—Leasing Program

3131.1 Receipt and consideration of nominations: public notice and participation.
3131.2 Tentative tract selection.
3131.3 Special stipulations.
3131.4 Lease sales.
3131.4-1 Notice of sale.

Subpart 3132—Issuance of Leases

3132.1 Who may hold a lease.
3132.2 Submission of bids.
3132.3 Payments.
3132.4 Qualifications.
3132.5 Award of leases.
3132.5-1 Forms.
3132.5-2 Dating of leases.

Subpart 3133—Rentals and Royalties

3133.1 Rentals.
3133.2 Royalties.
3133.2-1 Minimum royalties.

Subpart 3134—Bonding: General

3134.1 Bonding.
3134.1-1 Form of bond.
3134.1-2 Additional bonds.

Subpart 3135—Transfers, Extensions and Consolidations

3135.1 Transfers and extensions, general.
3135.1-1 Transfers.
3135.1-2 Requirements for filing of transfers.
3135.1-3 Separate filing for transfers.
3135.1-4 Effect of transfer of a tract.
3135.1-5 Extension of lease.
3135.1-6 Consolidation of leases.

Subpart 3136—Relinquishments, Terminations and Cancellations of Leases

3136.1 Relinquishment of leases or parts of leases.
3136.2 Terminations.
3136.3 Cancellation of leases.

AUTHORITY: The Department of the Interior Appropriations Act, Fiscal year 1981 (42 U.S.C. 6508), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 46 FR 55497, Nov. 9, 1981, unless otherwise noted.

Subpart 3130—Oil and Gas Leasing, National Petroleum Reserve, Alaska: General

§ 3130.0-1 Purpose.

These regulations establish the procedures under which the Secretary of the Interior will exercise the authority granted to administer a competitive leasing program for oil and gas within the National Petroleum Reserve—Alaska.

§ 3130.0-2 Policy.

The oil and gas leasing program within the National Petroleum Reserve—Alaska shall be conducted in accordance with the purposes and policy directions provided by the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514), and other executive, legislative, judicial and Department of the Interior guidance.

§ 3130.0-3 Authority.

(a) The Department of the Interior Appropriations Act, Fiscal year 1981 (Pub. L. 96-514);

(b) The Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504, *et seq.*); and

(c) The Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), except that sections 202 and 603 are not applicable.

§ 3130.0–5 Definitions.

As used in this part, the term:

(a) *Act* means the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96-514).

(b) *Bureau* means the Bureau of Land Management.

(c) *Constructive operations* means the exploring, testing, surveying or otherwise investigating the potential of a lease for oil and gas or the actual drilling or preparation for drilling of wells therefor.

(d) *NPR-A* means the area formerly within Naval Petroleum Reserve Numbered 4 Alaska which was redesignated as the National Petroleum Reserve—Alaska by the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501).

(e) *Reworking operations* means all operations designed to secure, restore or improve production through some use of a hole previously drilled, including, but not limited to, mechanical or chemical treatment of any horizon, deepening to test deeper strata and plugging back to test higher strata.

(f) *Special Areas* means the Utokok River, the Teshekpuk Lake areas and other areas within NPR—A identified by the Secretary as having significant subsistence, recreational, fish and wildlife or historical or scenic value.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3130.0–7 Cross references. [Reserved]

§ 3130.1 Attorney General review.

(a) Prior to the issuance of any lease, contract or operating agreement under this subpart, the Secretary shall notify the Attorney General of the proposed issuance, the name of the successful bidder, the terms of the proposed lease, contract or operating agreement and any other information the Attorney General may require to conduct an antitrust review of the proposed action. Such other information shall include, but is not limited to, information to be provided the Secretary by the successful bidder or its owners.

(b) In advance of the publication of any notice of sale, the Attorney General shall notify the Secretary of his/her preliminary determination of the information each successful bidder shall be required to submit for antitrust review purposes. The Secretary shall require this information to be promptly submitted by successful bidders, and may provide prospective bidders the opportunity to submit such information in advance of or accompanying their bids. For subsequent notices of sale, the Attorney General's preliminary information requirements shall be as specified for the prior notice unless a change in the requirements is communicated to the Secretary in advance of publication of the new notice of sale. Where a bidder in a prior sale has previously submitted any of the currently required information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in the information since the date of the previous submission, shall be sufficient.

(c) The Secretary shall not issue any lease, contract or operating agreement until:

(1) Thirty days after the Attorney General receives notice from the Secretary of the proposed lease contract or operating agreement, together with any other information required under this section; or

(2) The Attorney General notifies the Secretary that issuance of the proposed lease, contract or operating agreement does not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. The Attorney General shall inform the successful bidder, and simultaneously the Secretary, if the information supplied is insufficient, and shall specify what information is required for the Attorney General to complete his/her review. The 30-day period shall stop running on the date of such notification and not resume running until the Attorney General receives the required information.

(d) The Secretary shall not issue the lease, contract for operating agreement to the successful bidder, if, during the 30-day period, the Attorney General notifies the Secretary that such issuance would create or maintain a situation inconsistent with the antitrust laws.

(e) If the Attorney General does not reply in writing to the notification provided under paragraph (a) of this section within the 30-day review period, the Secretary may issue the lease, contract or operating agreement without waiting for the advice of the Attorney General.

(f) Information submitted to the Secretary to comply with this section shall be treated by the Secretary and by the Attorney General as confidential and proprietary data if marked confidential by the submitting bidder or other person. Such information shall be submitted to the Secretary in sealed envelopes and shall be transmitted in that form to the Attorney General.

(g) The procedures outlined in paragraphs (a) through (f) of this section apply to the proposed assignment or transfer of any lease, contract or operating agreement.

§ 3130.2 Limitation on time to institute suit to contest a Secretary's decision.

Any action seeking judicial review of the adequacy of any programmatic or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in NPR-A shall be barred unless brought in the appropriate District Court within 60 days after notice of availability of such statement is published in the FEDERAL REGISTER.

§ 3130.3 Drainage.

Upon a determination by the authorized officer, that lands owned by the United States within NPR-A are being drained, the regulations under § 3100.3 of this title, including the provisions relating to compensatory agreements or royalties, shall apply.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3130.4 Leasing: General.

§ 3130.4–1 Tract size.

A tract selected for leasing shall consist of a compact area of not more than 60,000 acres.

§ 3130.4–2 Lease term.

Each lease shall be issued for a primary term of 10 years, unless a shorter term is provided in the notice of sale.

§ 3130.5 Bona fide purchasers.

The provisions of § 3108.4 of this title shall apply to bona fide purchasers of leases within NPR-A.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3130.6 Leasing maps and land descriptions.

§ 3130.6–1 Leasing maps.

The Bureau shall prepare leasing maps showing the tracts to be offered for lease sale.

§ 3130.6–2 Land descriptions.

(a) All tracts shall be composed of entire sections either surveyed or protracted, whichever is applicable, except that if the tracts are adjacent to upland navigable water areas, they may be adjusted on the basis of subdivisional parts of the sections.

(b) Leased lands shall be described according to section, township and range in accordance with the official survey or protraction diagrams.

Subpart 3131—Leasing Program

§ 3131.1 Receipt and consideration of nominations; public notice and participation.

During preparation of a proposed leasing schedule, the Secretary shall invite and consider suggestions and relevant information for such program from the Governor of Alaska, local governments, Native corporations, industry, other Federal agencies, including the Attorney General and all interested parties, including the general public. This request for information shall be issued as a notice in the FEDERAL REGISTER.

§ 3131.2 Tentative tract selection.

(a) The State Director Alaska, Bureau of Land Management, shall issue calls for Nominations and Comments on tracts for leasing for oil and gas in specified areas. The call for Nominations and Comments shall be published in the Federal Register and may be published in other publications as desired by the State Director. Nominations and Comments on tracts shall be addressed to the State Director Alaska, Bureau of Land Management. The State Director shall also request comments on tracts which should receive special concern and analysis.

(b) The State Director, after completion of the required environmental analysis (see 40 CFR 1500-1508), shall select tracts to be offered for sale. In making the selection, the State Director shall consider available environmental information, multiple-use conflicts, resource potential, industry interest, information from appropriate Federal agencies and other available information. The State Director shall develop measures to mitigate adverse impacts, including lease stipulations and information to lessees. These mitigating measures shall be made public in the notice of sale.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3131.3 Special stipulations.

Special stipulations shall be developed to the extent the authorized officer deems necessary and appropriate for mitigating reasonably foreseeable and significant adverse impacts on the surface resources. Special Areas stipulations for exploration or production shall be developed in accordance with section 104 of the Naval Petroleum Reserves Production Act of 1976. Any special stipulations and conditions shall be set forth in the notice of sale and shall be attached to and made a part of the lease, if issued. Additional stipulations needed to protect surface resources and special areas may be imposed at the time the surface use plan and permit to drill are approved.

§ 3131.4 Lease sales.

§ 3131.4-1 Notice of sale.

(a) The State Director Alaska, Bureau of Land Management, shall publish the notice of sale in the Federal Register, and may publish the notice in other publications if he/she deems it appropriate. The publication in the Federal Register shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids are to be filed, and the place, date and hour at which bids are to be opened.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. Bidding systems used in sales shall be based on bidding systems included in section (205)(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 *et seq.*).

(c) A detailed statement of the sale, including a description of the areas to be offered for lease, the lease terms, conditions and special stipulations and how and where to submit bids shall be made available to the public immediately after publication of the notice of sale.

Subpart 3132—Issuance of Leases

§ 3132.1 Who may hold a lease.

Leases issued pursuant to this subpart may be held only by:

(a) Citizens and nationals of the United States;

(b) Aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(c) Private, public or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any of its territories; or

(d) Associations of such citizens, nationals, resident aliens or private, public or municipal corporations.

§ 3132.2 Submission of bids.

(a) A separate sealed bid shall be submitted for each tract in the manner prescribed. A bid shall not be submitted for less than an entire tract.

(b) Each bidder shall submit with the bid a certified or cashier's check, bank draft, U.S. currency or any other form of payment approved by the Secretary for one-fifth of the amount of the cash bonus, unless stated otherwise in the notice of sale.

(c) Each bid shall be accompanied by statements of qualifications prepared in accordance with § 3132.4 of this title.

(d) Bidders are bound by the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

§ 3132.3 Payments.

(a) Payments of bonuses, including deferred bonuses, first year's rental, other payments due upon lease issuance, and filing fees shall be made to the Alaska State Office, Department of the Interior, Bureau of Land Management. All payments shall be made by certified or cashier's check, bank draft, U.S. currency or any other form of payment approved by the Secretary. Payments shall be made payable to the Department of the Interior, Bureau of Land Management, unless otherwise directed.

(b) All other payments required by a lease or the regulations in this part shall be payable to the Department of the Interior, Minerals Management Service.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3132.4 Qualifications.

Submission of a lease bid constitutes certification of compliance with the regulations of this part. Anyone seeking to acquire, or anyone holding, a Federal oil and gas lease or interest therein may be required to submit additional information to show compliance with the regulations of this part.

[47 FR 8546, Feb. 26, 1982]

§ 3132.5 Award of leases.

(a) Sealed bids received in response to the notice of lease sale shall be opened at the place, date and hour specified in the notice of sale. The opening of bids is for the sole purpose of publicly announcing and recording the bids received. No bids shall be accepted or rejected at that time.

(b) The United States reserves the right to reject any and all bids received for any tract, regardless of the amount offered.

(c) In the event the highest bids are tie bids, the tying bidders shall be allowed to submit within 15 days of the public announcement of a tie bid additional sealed bids to break the tie. The additional bids shall include any additional amount necessary to bring the amount tendered with his/her bid to one-fifth of the additional bid. Additional bids to break tie bids shall be processed in accordance with paragraph (a) of this section.

(d) If the authorized officer fails to accept the highest bid for a lease within 90 days or a lesser period of time as specified in the notice of sale, the highest bid for that lease shall be considered rejected. This 90-day period or lesser period as specified in the notice of sale shall not include any period of time during which acceptance, rejection or other processing of bids and lease issuance by the Department of the Interior are enjoined or prohibited by court order.

(e) Written notice of the final decision on the bids shall be transmitted to those bidders whose deposits have been held in accordance with instructions set forth in the notice of sale. If a bid is accepted, 2 copies of the lease shall be transmitted with the notice of acceptance to the successful bidder. The bidder shall, not later than the 15th day after receipt of the lease, sign both copies of the lease and return them, together with the first year's rental and the balance of the bonus bid, unless deferred, and shall file a bond, if required to do so. Deposits shall be refunded on rejected bids.

(f) If the successful bidder fails to execute the lease within the prescribed time or otherwise to comply with the applicable regulations, the deposit shall be forfeited and disposed of as other receipts under the Act.

(g) If the awarded lease is executed by an attorney-in-fact acting on behalf of the bidder, the lease shall be accompanied by evidence that the bidder authorized the attorney-in-fact to execute the lease on his/her behalf. Reference may be made to the serial number of the record and the office of the Bureau of Land Management in which such evidence has already been filed.

(h) When the executed lease is returned to the authorized officer, he/she shall within 15 days of receipt of the material required by paragraph (e) of this section, execute the lease on behalf of the United States. A copy of the fully executed lease shall be transmitted to the lessee.

§ 3132.5-1 Forms.

Leases shall be issued on forms approved by the Director.

§ 3132.5-2 Dating of leases.

All leases issued under the regulations in this part shall become effective as of the first day of the month following the date they are signed on behalf of the United States. When prior written request is made, a lease may become effective as of the first day of the month within which it is signed on behalf of the United States.

Subpart 3133—Rentals and Royalties

§ 3133.1 Rentals.

(a) An annual rental shall be due and payable at the rate prescribed in the notice of sale and the lease, but in no event shall such rental be less than $3 per acre, or fraction thereof. Payment shall be made on or before the first day of each lease year prior to discovery of oil or gas on the lease.

(b) If there is no actual or allocated production on the portion of a lease that has been segregated from a producing lease, the owner of such segregated lease shall pay an annual rental for such segregated portion at the rate per acre specified in the original lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to discovery of oil or gas on such segregated portion.

(c) Annual rental paid in any year prior to discovery of oil or gas on the lease shall be in addition to, and shall not be credited against, any royalties due from production.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3133.2 Royalties.

Royalties on oil and gas shall be at the rate specified in the notice of sale as to the tracts, if appropriate, and in the lease, unless the Secretary, in order to promote increased production on the leased area through direct, secondary or tertiary recovery means, reduces or eliminates any royalty set out in the lease.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§ 3133.2-1 Minimum royalties.

For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

Subpart 3134—Bonding: General

§ 3134.1 Bonding.

(a) Prior to issuance of an oil and gas lease, the successful bidder shall furnish the authorized officer a surety or personal bond in accordance with the provisions of § 3104.1 of this title in the sum of $100,000 conditioned on compliance with all the lease terms, including rentals and royalties, conditions and any stipulations. The bond shall not be required if the bidder already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms, conditions and stipulations of all oil and gas leases held by the bidder within NPR-A, or maintains or furnishes a nationwide bond as set forth in § 3104.3(b) of this title and furnishes a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases held within NPR-A.

(b) A bond in the sum of $100,000 or $300,000, or a nationwide bond as provided in § 3104.3(b) of this title with a rider thereto sufficient to bring total coverage to $300,000 to cover all oil and gas leases within NPR-A, may be provided by an operating rights owner (sublessee) or operator in lieu of a bond furnished by the lessee, and shall assume the responsibilities and obligations of the lessee for the entire leasehold in the same manner and to the extent as though he/she were the lessee.

(c) If as a result of a default, the surety on a bond makes payment to the United States of any indebtedness under a lease secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(d) A new bond in the amount previously held or a larger amount as determined by the authorized officer shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu thereof, separate or substitute bonds for each lease covered by the prior bond may be filed.The authorized officer may cancel a lease(s) covered by a deficient bond(s), in accordance with §3136.3 of this title. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee when such lessee is not a party to the bond.

(e) Except as provided in this subpart, the bonds required for NPR-A leases are in addition to any other bonds the successful bidder may have filed or be required to file under §§3104.2, 3104.3(a) and 3154.1 and subparts 3206 and 3209 of this title.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988; 53 FR 22846, June 17, 1988]

§3134.1-1 Form of bond.

All bonds furnished by a lessee, operating rights owner (sublessee), or operator shall be on a form approved by the Director.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

§3134.1-2 Additional bonds.

(a) The authorized officer may require the bonded party to supply additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary to assure maximum protection of Special Areas.

(b) The holders of any oil and gas lease bond for a lease on the NPR-A shall be permitted to obtain a rider to include the coverage of oil and gas geophysical operations within the boundaries of NPR-A.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17358, May 16, 1988]

Subpart 3135—Transfers, Extensions and Consolidations

§ 3135.1 Transfers and extensions, general.

§ 3135.1-1 Transfers.

(a) Subject to approval of the authorized officer, a lessee may transfer his/her lease(s), or any undivided interest therein, or any legal subdivision, to anyone qualified under §§3130.1 and 3132.4 of this title to hold a lease.

(b) Any approved transfer shall be deemed to be effective on the first day of the lease month following its filing in the proper BLM office, unless, at the request of the parties, an earlier date is specified in the approval.

(c) The transferor shall continue to be responsible for all obligations under the lease accruing prior to the approval of the transfer.

(d) The transferee shall be responsible for all obligations under the lease subsequent to the effective date of a transfer, and shall comply with all regulations issued under the Act.

(e) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the rights transferred to the sublessee.

(f) Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17359, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

§ 3135.1-2 Requirements for filing of transfers.

(a)(1) All instruments of transfer of lease or of an interest therein, including operating rights, subleases and assignments of record-title shall be filed in triplicate for approval. Such instruments shall be filed within 90 days from the date of final execution. The instruments of transfer shall include a statement, over the transferee's own signature, with respect to citizenship and qualifications as required of a bidder under § 3132.4 of this title and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production or other interest may be created or transferred without approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25. Any document not required to be filed by the regulations in this part but submitted for record purposes shall be accompanied by a nonrefundable fee of $25 per each lease affected. Such documents may be rejected by the authorized officer.

(b) An attorney-in-fact, on behalf of the holder of a lease, operating rights or sublease, shall furnish evidence of authority to execute the transfer or application for approval and the statement required by § 3132.5(g) of this title.

(c) Where a transfer of record title creates separate leases, a bond shall be furnished covering the transferred lands in the amount prescribed in § 3134.1 of this title. Where a transfer does not create separate leases, the transferee, if the transfer so provides and the surety consents, may become co-principal on the bond with the transferor.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17359, May 16, 1988]

§ 3135.1-3 Separate filing for transfers.

A separate instrument of transfer shall be filed for each lease on a form approved by the Director or an exact reproduction of the front and back of such form. Any earlier editions of the current form are deemed obsolete and are unacceptable for filing. When transfers to the same person, association or corporation, involving more than 1 lease are filed at the same time for approval, 1 request for approval and 1 showing as to the qualifications of the transferee shall be sufficient.

[53 FR 17359, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§ 3135.1-4 Effect of transfer of a tract.

(a) When a transfer is made of all the record title to a portion of the acreage in a lease, the transferred and retained portions are divided into separate and distinct leases. Transfers shall not be made for less than a compact tract of not less than 640 acres nor shall less than a compact tract of not less than 640 acres be retained.

(b) Each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas is produced in paying quantities from that segregated portion of the lease area or so long as drilling or well reworking operations, either actual or constructive, as approved by the Secretary, are conducted thereon.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17359, May 16, 1988]

§ 3135.1-5 Extension of lease.

(a) The term of a lease shall be extended beyond its primary term so long as oil or gas is produced from the lease in paying quantities or so long as drilling or reworking operations, actual or constructive, as approved by the Secretary, are conducted thereon.

(b) A lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining lands not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the lease area when drilling is commenced on the adjacent or adjoining lands for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining lands. Production, drilling or reworking of any directional well shall be considered production or drilling or reworking operations on the lease area for all purposes of the lease.

§ 3135.1-6 Consolidation of leases.

(a) Leases may be consolidated upon written request of the lessee filed with the State Director Alaska, Bureau of Land Management. The request shall identify each lease involved by serial number and shall explain the factors which justify the consolidation.

(b) All parties holding any undivided interest in any lease involved in the consolidation shall agree to enter into the same lease consolidation.

(c) Consolidation of leases not to exceed 60,000 acres may be approved by the State Director, Alaska if it is determined that the consolidation is justified.

(d) The effective date, the anniversary date and the primary term of the consolidated lease shall be those of the oldest original lease involved in the consolidation. The term of a consolidated lease shall be extended beyond the primary lease term only so long as oil or gas is produced in paying quantities or approved constructive or actual drilling or reworking operations are conducted thereon.

(e) Royalty, rental, special lease stipulations and other terms and conditions of each original lease except the effective date, anniversary date and the primary term shall continue to apply to that lease or any portion thereof regardless of the lease becoming a part of a consolidated lease.

[48 FR 413, Jan. 5, 1983]

Subpart 3136—Relinquishments, Terminations and Cancellations of Leases

§ 3136.1 Relinquishment of leases or parts of leases.

A lease may be surrendered in whole or in part by the lessee by filing a written relinquishment, in triplicate, with the Alaska State Office of the Bureau. No filing fee is required. In the case of partial relinquishments, neither the relinquished lands nor the retained lands shall be less than a compact tract of not less than 640 acres. A relinquishment shall take effect on the date it is filed subject to the continued obligation of lessee and the surety to make all payments due, including any accrued rental, royalties and deferred bonuses and to abandon all wells, and condition or remove other facilities on the lands to be relinquished to the satisfaction of the authorized officer.

[46 FR 55497, Nov. 9, 1981, as amended at 53 FR 17359, May 16, 1988]

§ 3136.2 Terminations.

Any lease on which there is no well capable of producing oil or gas in paying quantities shall terminate if the lessee fails to pay the annual rental in full on or before the anniversary date of such lease and such failure continues for more than 30 days after the notice of delinquent rental has been delivered by registered or certified mail to the lease owner's record post office address.

§ 3136.3 Cancellation of leases.

(a) Any nonproducing lease may be canceled by the authorized officer whenever the lessee fails to comply with any provisions of the Acts cited in § 3130.0-3 of this title, of the regulations issued thereunder or of the lease, if such failure to comply continues for 30-days after a notice thereof has been delivered by registered or certified mail to the lease owner's record post office address.

(b) Producing leases or leases known to contain valuable deposits of oil or gas may be canceled only by court order.

PART 3140—COMBINED HYDROCARBON LEASING

Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

Sec.
3140.0-1 Purpose.
3140.0-3 Authority.
3140.0-5 Definitions.
3140.1 General provisions.
3140.1-1 Existing rights.
3140.1-2 Notice of intent to convert.
3140.1-3 Exploration plans.
3140.1-4 Other provisions.
3140.2 Applications.
3140.2-1 Forms.
3140.2-2 Who may apply.
3140.2-3 Application requirements.
3140.3 Time limitations.
3140.3-1 Conversion applications.
3140.3-2 Action on an application.
3140.4 Conversion.

Sec.
3140.4-1 Approval of plan of operations (and unit and operating agreements).
3140.4-2 Issuance of the combined hydrocarbon lease.
3140.5 Duration of the lease.
3140.6 Use of additional lands.
3140.7 Lands within the National Park System.

Subpart 3141—Competitive Leasing in Special Tar Sand Areas

3141.0-1 Purpose.
3141.0-3 Authority
3141.0-5 Definitions.
3141.0-8 Effect of existing regulations.
3141.1 General.
3141.2 Prelease exploration within Special Tar Sand Areas.
3141.2-1 Geophysical exploration.
3141.2-2 Exploration licenses.
3141.3 Land use plans.
3141.4 Consultation.
3141.4-1 Consultation with the Governor.
3141.4-2 Consultation with others.
3141.5 Leasing procedures.
3141.5-1 Economic evaluation.
3141.5-2 Term of lease.
3141.5-3 Royalties and rentals.
3141.5-4 Lease size.
3141.5-5 Dating of lease.
3141.6 Sale procedures.
3141.6-1 Initiation of competitive lease offering.
3141.6-2 Publication of a notice of competitive lease offering.
3141.6-3 Conduct of sales.
3141.6-4 Qualifications.
3141.6-5 Fair market value.
3141.6-6 Rejection of bid.
3141.6-7 Consideration of next highest bid.
3141.7 Award of lease.

Subpart 3142—Paying Quantities/Diligent Development

3142.0-1 Purpose.
3142.0-3 Authority.
3142.0-5 Definitions.
3142.1 Diligent development.
3142.2 Minimum production levels.
3142.2-1 Minimum production schedule.
3142.2-2 Advance royalties in lieu of production.
3142.3 Expiration.

AUTHORITY: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351-359; 95 Stat. 1070; 43 U.S.C. 1701 et seq, unless otherwise noted.

Subpart 3140—Conversion of Existing Oil and Gas Leases and Valid Claims Based on Mineral Locations

AUTHORITY: 30 U.S.C. 181 *et seq.*

SOURCE: 47 FR 22478, May 24, 1982, unless otherwise noted.

§ 3140.0-1 Purpose.

The purpose of this subpart is to provide for the conversion of existing oil and gas leases and valid claims based on mineral locations within Special Tar Sand Areas to combined hydrocarbon leases.

§ 3140.0-3 Authority.

These regulations are issued under the authority of the Mineral Lands Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*), and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97-78).

§ 3140.0-5 Definitions.

As used in this subpart, the term:

(a) *Combined hydrocarbon lease* means a lease issued in a Special Tar Sand Area for the removal of gas and nongaseous hydrocarbon substances other than coal, oil shale or gilsonite.

(b) *A complete plan of operations* means a plan of operations which is in substantial compliance with the information requirements of 43 CFR 3572.1 for both exploration plans and mining plans, as well as any additional information required in these regulations and under 43 CFR 3572.1, as may be appropriate.

(c) *Special Tar Sand Area* means an area designated by the Department of the Interior's orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077) referred to in those orders as Designated Tar Sand Areas, as containing substantial deposits of tar sand.

(d) *Owner of an oil and gas lease* means all of the record title holders of an oil gas lease.

(e) *Owner of a valid claim based on a mineral location* means all parties appearing on the title records recognized as official under State law as having the right to sell or transfer any part of the mining claim, which was located within a Special Tar Sand Area prior to January 21, 1926, for any hydrocarbon resource, except coal, oil shale or gilsonite, leasable under the Combined Hydrocarbon Leasing Act.

(f) *Unitization* means unitization as that term is defined in 43 CFR part 3180.

[47 FR 22478, May 24, 1982, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3140.1 General provisions.

§ 3140.1-1 Existing rights.

(a) The owner of an oil and gas lease issued prior to November 16, 1981, or the owner of a valid claim based on a mineral location situated within a Special Tar Sand Area may convert that portion of the lease or claim so situated to a combined hydrocarbon lease, provided that such conversion is consistent with the provisions of this subpart.

(b) Owners of oil and gas leases in Special Tar Sand Areas who elect not to convert their leases to a combined hydrocarbon lease do not acquire the rights to any hydrocarbon resource except oil and gas as those terms were defined prior to the enactment of the Combined Hydrocarbon Leasing Act of 1981. The failure to file an application to convert a valid claim based on a mineral location within the time herein provided shall have no effect on the validity of the mining claim nor the right to maintain that claim.

§ 3140.1-2 Notice of intent to convert.

(a) Owners of oil and gas leases in Special Tar Sand Areas which are scheduled to expire prior to the effective date of these regulations or within 6 months thereafter, may preserve the right to convert their leases to combined hydrocarbon leases by filing a Notice of Intent to Convert with the State Director, Utah State Office, Bureau of Land Management, 136 E. South Temple, Salt Lake City, Utah 84111.

(b) A letter, submitted by the lessee, notifying the Bureau of Land Management of the lessee's intention to submit a plan of operations shall constitute a notice of intent to convert a lease. The Notice of Intent shall contain the lease number.

(c) The Notice of Intent shall be filed prior to the expiration date of the lease. The notice shall preserve the lessee's conversion rights only for a period ending 6 months after the effective date of this subpart.

§ 3140.1-3 Exploration plans.

(a) The authorized officer may grant permission to holders of existing oil and gas leases to gather information to develop, perfect, complete or amend a plan of operations required for conversion upon the approval of the authorized officer of an exploration plan developed in accordance with 43 CFR 3592.1.

(b) The approval of an exploration plan in units of the National Park System requires the consent of the Regional Director of the National Park Service in accordance with § 3140.7 of this title.

(c) The filing of an exploration plan alone shall be insufficient to meet the requirements of a complete plan of operations as set forth in § 3140.2-3 of this title.

[47 FR 22478, May 24, 1982, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3140.1-4 Other provisions.

(a) A combined hydrocarbon lease shall be for no more than 5,120 acres. Acreage held under lease in a Special Tar Sand Area is not chargeable to State oil and gas limitations allowable in § 3101.2 of this title.

(b) The rental rate for a combined hydrocarbon lease shall be $2 per acre per year and shall be payable annually in advance.

(c)(1) The royalty rate for a combined hydrocarbon lease converted from an oil and gas lease shall be that provided for in the original oil and gas lease.

(2) The royalty rate for a combined hydrocarbon lease converted from a valid claim based on a mineral location shall be 12½ percent.

(3) A reduction of royalties may be granted either as provided in § 3103.4-1 of this title or, at the request of the lessee and upon a review of information provided by the lessee, prior to commencement of commercial operations if the purpose of the request is to promote development and the maximum production of tar sand.

(d)(1) Existing oil and gas leases and valid claims based on mineral locations may be unitized prior to or after the lease or claim has been converted to a combined hydrocarbon lease. The requirements of 43 CFR part 3180 shall provide the procedures and general guidelines for unitization of combined hydrocarbon leases. For leases within units of the National Park System, unitization requires the consent of the Regional Director of the National Park Service in accordance with § 3140.4-1(b) of this title.

(2) If the plan of operations submitted for conversion is designed to cover a unit, a fully executed unit agreement shall be approved before the plan of operations applicable to the unit may be approved under § 3140.2 of this title. The proposed plan of operations and the proposed unit agreement may be reviewed concurrently. The approved unit agreement shall be effective after the leases or claims subject to it are converted to combined hydrocarbon leases. The plan of operations shall explain how and when each lease included in the unit operation will be developed.

(e) Except as provided for in this subpart, the regulations set out in part 3100 of this title are applicable, as appropriate, to all combined hydrocarbon leases issued under this subpart.

[47 FR 22478, May 24, 1982, as amended at 48 FR 33682, July 22, 1983; 55 FR 12351, Apr. 3, 1990]

§ 3140.2 Applications.

§ 3140.2-1 Forms.

No special form is required for a conversion application.

§ 3140.2-2 Who may apply.

Only owners of oil and gas leases issued within Special Tar Sands Areas, on or before November 16, 1981, and owners of valid claims based on mineral locations within Special Tar Sands Areas, are eligible to convert leases or claims to combined hydrocarbon leases in Special Tar Sands Areas.

[55 FR 12351, Apr. 3, 1990]

§ 3140.2-3 Application requirements.

(a) The applicant shall submit to the State Director, Utah State Office of the Bureau of Land Management, a written request for a combined hydrocarbon lease signed by the owner of the lease or valid claim which shall be accompanied by 3 copies of a plan of operations which shall meet the requirements of 43 CFR 3592.1 and which shall provide for reasonable protection of the environment and diligent development of the resources requiring enhanced recovery methods of development or mining.

(b) A plan of operations may be modified or amended before or after conversion of a lease or valid claim to reflect changes in technology, slippages in schedule beyond the control of the lessee, new information about the resource or the economic or environmental aspects of its development, changes to or initiation of applicable unit agreements or for other purposes. To obtain approval of a modification or amended plan, the applicant shall submit a written statement of the proposed changes or supplements and the justification for the changes proposed. Any modifications shall be in accordance with 43 CFR 3592.1(c). The approval of the modification or amendment is the responsibility of the authorized officer. Changes or modification to the plan of operations shall have no effect on the primary term of the lease. The authorized officer shall, prior to approving any amendment or modification, review the modification or amendment with the appropriate surface management agency. For leases within units of the National Park System, no amendment or modification shall be approved without the consent of the Regional Director of the National Park Service in accordance with § 3140.7 of this title.

(c) The plan of operations may be for a single existing oil and gas lease or valid claim or for an area of proposed unit operation.

(d) The plan of operations shall identify by lease number all Federal oil and gas leases proposed for conversion and identify valid claims proposed for conversion by the recordation number of the mining claim.

(e) The plan of operations shall include any proposed designation of operator or proposed operating agreement.

(f) The plan of operations may include an exploration phase, if necessary, but it shall include a development phase. Such a plan can be approved even though it may indicate work under the exploration phase is necessary to perfect the proposed plan for the development phase as long as the overall plan demonstrates reasonable protection of the environment and diligent development of the resources requiring enhanced recovery methods of mining.

(g)(1) Upon determination that the plan of operations is complete, the authorized officer shall suspend the term of the Federal oil and gas lease(s) as of the date that the complete plan was filed until the plan is finally approved or rejected. Only the term of the oil and gas lease shall be suspended, not any operation and production requirements thereunder.

(2) If the authorized officer determines that the plan of operations is not complete, the applicant shall be notified that the plan is subject to rejection if not completed within the period specified in the notice.

(3) The authorized officer may request additional data after the plan of operations has been determined to be complete. This request for additional information shall have no effect on the suspension of the running of the oil and gas lease.

[47 FR 22478, May 24, 1982, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3140.3 Time limitations.

§ 3140.3-1 Conversion applications.

A plan of operations to convert an existing oil and gas lease or valid claim based on a mineral location to a combined hydrocarbon lease shall be filed on or before November 15, 1983, or prior to the expiration of the oil and gas lease, whichever is earlier, except as provided in § 3140.1-2 of this title.

§ 3140.3-2 Action on an application.

The authorized officer shall take action on an application for conversion within 15 months of receipt of a proposed plan of operations.

[47 FR 22478, May 24, 1982, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3140.4 Conversion.

§ 3140.4-1 Approval of plan of operations (and unit and operating agreements).

(a) The owner of an oil and gas lease, or the owner of a valid claim based on a mineral location shall have such lease or claim converted to a combined hydrocarbon lease when the plan of operations, filed under § 3140.2 of this title, is deemed acceptable and is approved by the authorized officer.

(b) The conversion of a lease within a unit of the National Park System shall be approved only with the consent of the Regional Director of the National Park Service in accordance with § 3140.7 of this title.

(c) A plan of operations may not be approved in part but may be approved where it contains an appropriately staged plan of exploration and development operations.

[47 FR 22478, May 24, 1982, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3140.4-2 Issuance of the combined hydrocarbon lease.

(a) After a plan of operations is found acceptable, and is approved, the authorized officer shall prepare and submit to the owner, for execution, a combined hydrocarbon lease containing all appropriate terms and conditions, including any necessary stipulations that were part of the oil and gas lease being converted, as well as any additional stipulations, such as those required to ensure compliance with the plan of operations.

(b) The authorized officer shall not sign the combined hydrocarbon lease until it has been executed by the conversion applicant and the lease or claim to be converted has been formally relinquished to the United States.

(c) The effective date of the combined hydrocarbon lease shall be the first day of the month following the date that the authorized officer signs the lease.

(d)(1) Except to the extent that any such lease would exceed 5,210 acres, the authorized officer may issue, upon the request of the applicant, 1 combined hydrocarbon lease to cover contiguous oil and gas leases or valid claims based on mineral locations which have been approved for conversion.

(2) To the extent necessary to promote the development of the resource, the authorized officer may issue, upon the request of the applicant, 1 combined hydrocarbon lease that does not exceed 5,120 acres, which shall be as nearly compact as possible, to cover non-contiguous oil and gas leases or valid claims which have been approved for conversion.

§ 3140.5 Duration of the lease.

A combined hydrocarbon lease shall be for a primary term of 10 years and for so long thereafter as oil or gas is produced in paying quantities.

§ 3140.6 Use of additional lands.

(a) The authorized officer may noncompetitively lease additional lands for ancillary facilities in a Special Tar Sand Area that are needed to support any operations necessary for the recovery of tar sand. Such uses include, but are not limited to, mill site or waste disposal. Application for a lease or permit to use additional lands shall be filed under the provisions of part 2920 of this title with the proper BLM office having jurisdiction of the lands. The application for additional lands may be filed at the time a plan of operations is filed.

(b) A lease for the use of additional lands shall not be issued when the use can be authorized under parts 2800 and 2880 of this title. Such uses include, but are not limited to, reservoirs, pipelines, electrical generation systems, transmission lines, roads, and railroads.

(c) Within units of the National Park System, permits or leases for additional lands shall only be issued by the National Park Service. Applications for such permits or leases shall be filed with the Regional Director of the National Park Service.

§ 3140.7 Lands within the National Park System.

Conversions of existing oil and gas leases and valid claims based on mineral locations to combined hydrocarbon leases within units of the National Park System shall be allowed only where mineral leasing is permitted by law and where the lands covered by the lease or claim proposed for conversion are open to mineral resource disposition in accordance with any applicable minerals management plan. (See 43 CFR 3100.0-3 (g)(4)). In order to consent to any conversion or any subsequent development under a combined hydrocarbon lease requiring further approval, the Regional Director of the National Park Service shall find that there will be no resulting significant adverse impacts on the resources and administration of such areas or on other contiguous units of the National Park System in accordance with § 3109.2(b) of this title.

[47 FR 22478, May 24, 1982, as amended at 48 FR 33682, July 22, 1983; 55 FR 12351, Apr. 3, 1990]

Subpart 3141—Competitive Leasing in Special Tar Sand Areas

AUTHORITY: 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 43 U.S.C. 1701 *et seq.*, 95 Stat. 1070.

SOURCE: 48 FR 7422, Feb. 18, 1983, unless otherwise noted.

NOTE: The information collection requirements contained in 43 CFR subpart 3141 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* because there are fewer than 10 respondents annually.

§ 3141.0-1 Purpose.

The purpose of this subpart is to provide for the competitive leasing of lands and issuance of Combined Hydrocarbon Leases within Special Tar Sand Areas.

§ 3141.0-3 Authority.

These regulations are issued under the authority of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 *et seq.*), the Federal Land Policy and Manangement Act of 1976 (43 U.S.C. 1701 *et* seq.), and the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070).

§ 3141.0–5 Definitions.

As used in this subpart, the term:

(a) *Combined hydrocarbon lease* means a lease issued in a Special Tar Sand Area for the removal of any gas and nongaseous hydrocarbon substance other than coal, oil shale or gilsonite.

(b) *Special Tar Sand Area* means an area designated by the Department of the Interior's Orders of November 20, 1980 (45 FR 76800), and January 21, 1981 (46 FR 6077), and referred to in those orders as Designated Tar Sand Areas, as containing substantial deposits of tar and sand.

(c) *Tar sand* means any consolidated or unconsolidated rock (other than coal, oil shale or gilsonite) that either: (1) Contains a hydrocarbonaceous material with a gas-free viscosity, at original reservoir temperature greater than 10,000 centipoise, or (2) contains a hydrocarbonaceous material and is produced by mining or quarrying.

(d) *Oil* means all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale or gilsonite (including all vein-type solid hydrocarbons).

§ 3141.0–8 Effect of existing regulations.

(a) The following provisions of part 3100 of this title, as they relate to competitive leasing, apply to the issuance and administration of combined hydrocarbon leases issued under this part.

(1) All of subpart 3100, with the exception of § 3100.3-2;

(2) The following sections of subpart 3101: §§ 3101.1-1, 3101.2-1, 3101.2-2, 3101.2-4, 3101.2-5, 3101.7-1, 3101.7-2, and 3101.7-3;

(3) All of subpart 3102;

(4) All of subpart 3103, with the exception of §§ 3103.2-1, those portions of 3103.2-2 dealing with noncompetitive leases, and 3103.3-1 (a), (b), and (c);

(5) All of subpart 3104;

(6) All of subpart 3105;

(7) All of subpart 3106, with the exception of § 3106.1 (c);

(8) All of subpart 3107, with the exception of § 3107.7;

(9) All of subpart 3108; and

(10) All of subpart 3109, with special emphasis on § 3109.2 (b).

(b) Prior to commencement of operations, the lessee shall develop either a plan of operations as described in 43 CFR 3592.1 which ensures reasonable protection of the environment or file an application for a permit to drill as described in 43 CFR part 3160, whichever is appropriate.

(c) The provisions of 43 CFR part 3180 shall serve as general guidance to the administration of combined hydrocarbon leases issued under this subpart to the extent they may be included in unit or cooperative agreements.

[48 FR 7422, Feb. 18, 1983, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3141.1 General.

(a) All oil and gas within a Special Tar Sand Area shall be leased only by competitive bonus bidding and only combined hydrocarbon leases shall be issued for oil and gas within such areas.

(b) The acreage of combined hydrocarbon leases held within a Special Tar Sand Area shall not be charged against acreage limitations for the holding of oil and gas leases.

(c)(1) The authorized officer may noncompetitively lease additional lands for ancillary facilities in a Special Tar Sand Area that are shown by an applicant to be needed to support any operations necessary for the recovery of tar sand. Such uses include, but are not limited to, mill siting or waste disposal. An application for a lease or permit to use additional lands shall be filed under the provisions of part 2920 of this title with the proper BLM office having jurisdiction of the lands. The application for additional lands may be filed at the time a plan of operations is filed.

(2) A lease for the use of additional lands shall not be issued under this part when the use can be authorized under part 2800 of this title. Such uses include, but are not limited to, reservoirs, pipelines, electrical generation systems, transmission lines, roads and railroads.

(3) Within units of the National Park System, permits or leases for ad-

ditional lands for any purpose shall be issued only by the National Park Service. Applications for such permits or leases shall be filed with the Regional Director of the National Park Service.

§ 3141.2 Prelease exploration within Special Tar Sand Areas.

§ 3141.2-1 Geophysical exploration.

Geophysical exploration in Special Tar Sand Areas shall be governed by part 3150 of this title. Information obtained under a permit shall be made available to the Bureau of Land Management upon request.

[48 FR 7422, Feb. 18, 1983, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3141.2-2 Exploration licenses.

(a) Any person(s) qualified to hold a lease under the provisions of subpart 3102 of this title and this subpart may obtain an exploration license to conduct core drilling and other exploration activities to collect geologic, environmental and other data concerning tar sand resources only on lands, the surface of which are under the jurisdiction of the Bureau of Land Management, within or adjacent to a Special Tar Sand Area. The application for such a license shall be submitted to the proper BLM office having jurisdiction of the lands. No drilling for oil or gas will be allowed under an exploration license issued under this subpart. No specific form is required for an application for an exploration license.

(b) The application for an exploration license shall be subject to the following requirements:

(1) Each application shall contain the name and address of the applicant(s);

(2) Each application shall be accompanied by a nonrefundable filing fee of $250.00;

(3) Each application shall contain a description of the lands covered by the application according to section, township and range in accordance with the official survey;

(4) Each application shall include 3 copies of an exploration plan which complies with the requirements of 43 CFR 4392.1 (a); and

(5) An application shall cover no more than 5,120 acres, which shall be as nearly compact as possible.

The authorized officer may grant an exploration license covering more than 5,120 acres only if the application contains a justification for an exception to the normal limitation.

(c) The authorized officer may, if he/she determines it necessary to avoid impacts resulting from duplication of exploration activities, require applicants for exploration licenses to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis. If joint participation is determined necessary, it shall be conducted according to the following:

(1) Immediately upon the notification of a determination that parties shall be given an opportunity to participate in the exploration license, the applicant shall publish a "Notice of Invitation," approved by the authorized officer, once every week for 2 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands covered by the exploration license are situated. This notice shall contain an invitation to the public to participate in the exploration license on a pro rata cost sharing basis. Copies of the "Notice of Invitation" shall be filed with the authorized officer at the time of publication by the applicant for posting in the proper BLM office having jurisdiction over the lands covered by the application for at least 30 days prior to the issuance of the exploration license.

(2) Any person seeking to participate in the exploration program described in the Notice of Invitation shall notify the authorized officer and the applicant in writing of such intention within 30 days after posting in the proper BLM office having jurisdiction over the lands covered by the Notice of Invitation. The authorized officer may require modification of the original exploration plan to accommodate the legitimate exploration needs of the person(s) seeking to participate and to avoid the duplication of exploration activities in the same area, or that the person(s) should file a sepa-

rate application for an exploration license.

(3) An application to conduct exploration which could have been conducted under an existing or recent exploration license issued under this paragraph may be rejected.

(d) The authorized officer may accept or reject an exploration license application. An exploration license shall become effective on the date specified by the authorized officer as the date when exploration activities may begin. The exploration plan approved by the Bureau of Land Management shall be attached and made a part of each exploration license.

(e) An exploration license shall be subject to these terms and conditions:

(1) The license shall be for a term of not more than 2 years;

(2) The rental shall be $2 per acre per year payable in advance;

(3) The licensee shall provide a bond in an amount determined by the authorized officer, but not less than $5,000. The authorized officer may accept bonds furnished under subpart 3104 of this title, if adequate. The period of liability under the bond shall be terminated only after the authorized officer determines that the terms and conditions of the license, the exploration plan and the regulations have been met;

(4) The licensee shall provide to the Bureau of Land Management upon request all required information obtained under the license. Any information provided shall be treated as confidential and proprietary, if appropriate, at the request of the licensee, and shall not be made public until the areas involved have been leased or only if the Bureau of Land Management determines that public access to the data will not damage the competitive position of the licensee.

(5) Operations conducted under a license shall not unreasonably interfere with or endanger any other lawful activity on the same lands, shall not damage any improvements on the lands, and shall not result in any substantial disturbance to the surface of the lands and their resources;

(6) The authorized officer shall include in each license requirements and stipulations to protect the environment and associated natural resources, and to ensure reclamation of the land disturbed by exploration operations;

(7) When unforeseen conditions are encountered that could result in an action prohibited by paragraph (e)(5) of this section, or when warranted by geologic or other physical conditions, the authorized officer may adjust the terms and conditions of the exploration license, may direct adjustment in the exploration plan;

(8) The licensee may submit a request for modification of the exploration plan to the authorized officer. Any modification shall be subject to the regulations in this section and the terms and conditions of the license. The authorized officer may approve the modification after any necessary adjustments to the terms and conditions of the license that are accepted in writing by the licensee; and

(9) The license shall be subject to termination or suspension as provided in § 2920.9-3 of this title.

[48 FR 7422, Feb. 18, 1983, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3141.3 Land use plans.

No lease shall be issued under this subpart unless the lands have been included in a land use plan which meets the requirements under part 1600 of this title or an approved Minerals Management Plan of the National Park Service. The decision to hold a lease sale and issue leases shall be in conformance with the appropriate plan.

§ 3141.4 Consultation.

§ 3141.4-1 Consultation with the Governor.

The Secretary shall consult with the Governor of the State in which any tract proposed for sale is located. The Secretary shall give the Governor 30 days to comment before determining whether to conduct a lease sale. The Secretary shall seek the recommendations of the Governor of the State in which the lands proposed for lease are located as to whether or not to lease such lands and what alternative actions are available and what special conditions could be added to the proposed lease(s) to mitigate impacts. The Secretary shall accept the recommendations of the Governor if he/she determines that they provide for a reasonable balance between the national interest and the State's interest. The Secretary shall communicate to the Governor in writing and publish in the FEDERAL REGISTER the reasons for his/her determination to accept or reject such Governor's recommendations.

§ 3141.4-2 Consultation with others.

(a) Where the surface is administered by an agency other than the Bureau of Land Management, including lands patented or leased under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), all leasing under this subpart shall be in accordance with the consultation requirements of subpart 3100 of this title.

(b) The issuance of combined hydrocarbon leases within units of the National Park System shall be allowed only where mineral leasing is permitted by law and where the lands are open to mineral resource disposition in accordance with any applicable Minerals Management Plan. In order to consent to any issuance of a combined hydrocarbon lease or subsequent development of combined hydrocarbon resources within a unit of National Park System, the Regional Director of the National Park Service shall find that there will be no resulting significant adverse impacts to the resources and administration of the unit or other contiguous units of the National Park System in accordance with § 3109.2 (b) of this title.

[48 FR 7422, Feb. 18, 1983, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3141.5 Leasing procedures.

§ 3141.5-1 Economic evaluation.

Prior to any lease sale, the authorized officer shall request an economic evaluation of the total hydrocarbon resource on each proposed lease tract exclusive of coal, oil shale or gilsonite.

§ 3141.5-2 Term of lease.

Combined hydrocarbon leases shall have a primary term of 10 years and shall remain in effect so long thereafter as oil or gas is produced in paying quantities.

§ 3141.5-3 Royalties and rentals.

(a) The royalty rate on all combined hydrocarbon leases is 12½ percent of the value of production removed or sold from a lease. The Minerals Management Service shall be responsible for collecting and administering royalties.

(b) The lessee may request the Secretary to reduce the royalty rate applicable to tar sand prior to commencement of commercial operations in order to promote development and maximum production of the tar sand resource in accordance with procedures established by the Bureau of Land Managment and may request a reduction in the royalty after commencement of commercial operations in accordance with § 3103.4-1 of this title.

(c) The rental rate for a combined hydrocarbon lease shall be $2 per acre per year, and shall be payable annually in advance.

(d) Except as explained in paragraphs (a), (b), and (c) of this section, all other provisions of §§ 3103.2 and 3103.3 of this title apply to combined hydrocarbon leasing.

[48 FR 7422, Feb. 18, 1983, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3141.5-4 Lease size.

Combined hydrocarbon leases shall not exceed 5,120 acres.

§ 3141.5-5 Dating of lease.

A combined hydrocarbon lease shall be effective as of the first day of the month following the date the lease is signed on behalf of the United States, except that where prior written request is made, a lease may be made effective on the first of the month in which the lease is signed.

§ 3141.6 Sale procedures.

§ 3141.6-1 Initiation of competitive lease offering.

The Bureau of Land Management may, on its own motion, offer lands through competitive bidding. A request or expression(s) of interest in tract(s) for competitive lease offerings shall be submitted in writing to the proper BLM office.

§ 3141.6–2 Publication of a notice of competitive lease offering.

Where a determination to offer lands for competitive leasing is made, a notice shall be published of the lease sale in the FEDERAL REGISTER and a newspaper of general circulation in the area in which the lands to be leased are located. The publication shall appear once in the FEDERAL REGISTER and at least once a week for 3 consecutive weeks in a newspaper, or for other such periods deemed necessary. The notice shall specify the time and place of sale, the manner in which the bids may be submitted; the description of the lands; the terms and conditions of the lease, including the royalty and rental rates; the amount of the minimum bid; and shall state that the terms and conditions of the leases are available for inspection and designate the proper BLM office where bid forms may be obtained.

[48 FR 7422, Feb. 18, 1983, as amended at 55 FR 12351, Apr. 3, 1990]

§ 3141.6–3 Conduct of sales.

(a) Competitive sales shall be conducted by the submission of written sealed bids.

(b) Minimum bids shall be not less than $25 per acre.

(c) In the event that only 1 sealed bid is received and it is equal to or greater than the minimum bid, that bid shall be considered the highest bid.

(d) The authorized officer may reject any or all bids.

(e) The authorized officer may waive minor deficiencies in the bids or the lease sale advertisement.

(f) A bid deposit of one-fifth of the amount of the sealed bid shall be required and shall accompany the sealed bid. All bid deposits shall be in the form of either a certified check, money order, bank cashier's check or cash.

§ 3141.6–4 Qualifications.

Each bidder shall submit with the bid a statement over the bidder's signature with respect to compliance with subpart 3102 of this title.

§ 3141.6–5 Fair market value.

Only those bids which reflect the fair market value of the tract(s) as determined by the authorized officer shall be accepted; all other bids shall be rejected.

§ 3141.6–6 Rejection of bid.

If the high bid is rejected for failure by the successful bidder to execute the lease forms and pay the balance of the bonus bid, or otherwise to comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited.

§ 3141.6–7 Consideration of next highest bid.

The Department reserves the right to accept the next highest bid if the highest bid is rejected. In no event shall an offer be made to the next highest bidder if the difference beween his/her bid and that of the rejected successful bidder is greater than the one-fifth bonus forfeited by the rejected successful bidder.

[55 FR 12351, Apr. 3, 1990]

§ 3141.7 Award of lease.

After determining the highest responsible qualified bidder, the authorized officer shall send 3 copies of the lease on a form approved by the Director, and any necessary stipulations, to the successful bidder. The successful bidder shall, not later than the 30th day after receipt of the lease, execute the lease, pay the balance of the bid and the first year's rental, and file a bond as required in subpart 3104 of this title. Failure to comply with this section shall result in rejection of the lease.

Subpart 3142—Paying Quantities/ Diligent Development

SOURCE: 51 FR 7276, Mar. 3, 1986, unless otherwise noted.

§ 3142.0.1 Purpose.

This subpart provides definitions and procedures for meeting the production in paying quantities and the diligent development requirements for tar sand in all combined hydrocarbon leases.

§ 3142.0-3 Authority.

These regulations are issued under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070).

§ 3142.0-5 Definitions.

As used in part 3140 of this title, the term *production in paying quantities* means:

(a) Production, in compliance with an approved plain of operations and by nonconventional methods, of oil and gas which can be marketed; or

(b) Production of oil or gas by conventional methods as the term is currently used in part 3160 of this title.

§ 3142.1 Diligent development.

A lessee shall have met his/her diligent development obligation if:

(a) The lessee is conducting activity on the lease in accordance with an approved plan of operations; and

(b) The lessee files with the authorized officer, not later than the end of the eighth lease year, a supplement to the approved plan of operations which shall include the estimated recoverable tar sand reserves and a detailed development plan for the next stage of operations;

(c) The lessee has achieved production in paying quantities, as that term is defined in § 3142.0-5(a) of this title, by the end of the primary term; and

(d) The lessee annually produces the minimum amount of tar sand established by the authorized officer under the lease in the minimum production schedule which shall be made part of the plan of operations or pays annually advance royalty in lieu of this minimum production.

§ 3142.2 Minimum production levels.

§ 3142.2-1 Minimum production schedule.

Upon receipt of the supplement to the plan of operations described in § 3142.1(b) of this title, the authorized officer shall examine the information furnished by the lessee and determine if the estimate of the recoverable tar sand reserves is adequate and reasonable. In making this determination, the authorized officer may request, and the lessee shall furnish, any information that is the basis of the lessee's estimate of the recoverable tar sand reserves. As part of the authorized officer's determination that the estimate of the recoverable tar sand reserves is adequate and reasonable, he/she may consider, but is not limited to, the following: or grade, strip ratio, vertical and horizal continuity, extract process recoverability, and proven or unproven status of extraction technology, terrain, environmental mitigation factors, marketability of products and capital operations costs. The authorized officer shall then establish as soon as possible, but prior to the beginning of the eleventh year, based upon the estimate of the recoverable tar sand reserves, a minimum annual tar sand production schedule for the lease or unit operations which shall start in the eleventh year of the lease. This minimum production level shall escalate in equal annual increments to a maximum of 1 percent of the estimated recoverable tar sand reserves in the twentieth year of the lease and remain at 1 percent each year thereafter.

§ 3142.2-2 Advance royalties in lieu of production.

(a) Failure to meet the minimum annual tar sand production schedule level in any year shall result in the assessment of an advance royalty in lieu of production which shall be credited to future production royalty assessments applicable to the lease or unit.

(b) If there is no production during the lease year, and the lessee has reason to believe that there shall be no production during the remainder of the lease year, the lessee shall submit to the authorized officer a request for suspension of production at least 90 days prior to the end of that lease year and a payment sufficient to cover any advance royalty due and owing as a result of the failure to produce. Upon receipt of the request for suspension of production and the accompanying payment, the authorized officer shall approve a suspension of production for that lease year and the lease shall not expire during that year for lack of production.

(c) If there is production on the lease or unit during the lease year, but such production fails to meet the minimum production schedule required by the plan of operations for that lease or unit, the lessee shall pay an advance royalty within 60 days of the end of the lease year in an amount sufficient to cover the difference between such actual production and the production schedule required by the plan of operations for that lease or unit and the authorized officer shall direct a suspension of production for those periods during which no production occurred.

§ 3142.3 Expiration.

Failure of the lessee to pay advance royalty within the time prescribed by the authorized officer, or failure of the lessee to comply with any other provisions of this subpart following the end of the primary term of the lease, shall result in the automatic expiration of the lease as of the first of the month following notice to the lessee of its failure to comply. The lessee shall remain subject to the requirement of applicable laws, regulations and lease terms which have not been met at the expiration of the lease.

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

Sec.
3150.0-1 Purpose.
3150.0-3 Authority.
3150.0-5 Definitions.
3150.1 Suspension, revocation or cancellation.

Sec.

Subpart 3151—Exploration Outside of Alaska

3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.
3151.2 Notice of completion of operations.

Subpart 3152—Exploration in Alaska

3152.1 Application for oil and gas geophysical exploration permit.
3152.2 Action on application.
3152.3 Renewal of exploration permit.
3152.4 Relinquishment of exploration permit.
3152.5 Modification of exploration permit.
3152.6 Collection and submission of data.
3152.7 Completion of operations.

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

3153.1 Geophysical permit requirements.

Subpart 3154—Bond Requirements

3154.1 Types of bonds.
3154.2 Additional bonding.
3154.3 Bond cancellation or termination of liability.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504), and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

SOURCE: 53 FR 17359, May 16, 1988, unless otherwise noted.

Subpart 3150—Onshore Oil and Gas Geophysical Exploration; General

§ 3150.0-1 Purpose.

The purpose of this part is to establish procedures for conducting oil and gas geophysical exploration operations when authorization for such operations is required from the Bureau of Land Management. Geophysical exploration on public lands, the surface of which is administered by the Bureau, requires Bureau approval. The procedures in this part also apply to geophysical exploration conducted under the rights granted by any Federal oil and gas lease unless the surface is administered by the U.S. Forest Service. However, a lessee may elect to conduct exploration operations outside of the rights granted by the lease, in which case authorization from the surface managing agency or surface owner may be required. At the request of any other surface managing agency, the procedures in this part may be applied on a case-by-case basis to unleased public lands administered by such agency. The procedures of this part do not apply to:

(a) Casual use activities;

(b) Operations conducted on private surface overlying public lands unless such operations are conducted by a lessee under the rights granted by the Federal oil and gas lease; and

(c) Exploration operations conducted in the Arctic National Wildlife Refuge in accordance with section 1002 of the Alaska National Interest Lands Conservation Act (See 50 CFR part 37).

§ 3150.0-3 Authority.

The Mineral Leasing Act of 1920, as amended and supplemented, (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504) and the Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508).

§ 3150.0-5 Definitions.

As used in this part, the term:

(a) *Oil and gas geophysical exploration* means activity relating to the search for evidence of oil and gas which requires the physical presence upon the lands and which may result in damage to the lands or the resources located thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails and cross-country transit of vehicles over such lands. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities shall be authorized only by the issuance of an oil and gas lease and the approval of an Application for a Permit to Drill. The regulations in this part, however, are not intended to prevent drilling operations necessary for placing explosive charges, where permissible, for seismic exploration.

(b) *Casual use* means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicular movement except over established roads and trails are casual use.

[53 FR 17359, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§ 3150.1 Suspension, revocation or cancellation.

The right to conduct exploration under notices of intent and oil and gas geophysical exploration permits may be revoked or suspended, after notice, by the authorized officer and upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations issued under Acts applicable to the public lands and applicable State air and water quality standards or implementation plans. The Secretary may order an immediate temporary suspension of activities authorized under a permit or other use authorization prior to a hearing or final administrative finding if he/she determines that such a suspension is necessary to protect health or safety or the environment. Further, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

Subpart 3151—Exploration Outside of Alaska

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

Parties wishing to conduct oil and gas geophysical exploration outside of the State of Alaska shall file a Notice of Intent to Conduct Oil and Gas Exploration Operations, referred to herein as a notice of intent. The notice of intent shall be filed with the District Manager of the proper BLM office on the form approved by the Director. Within 5 working days of the filing date, the authorized officer shall process the notice of intent and notify the operator of practices and procedures to be followed. If the notice of intent cannot be processed within 5 working days of the filing date, the authorized officer shall promptly notify the operator as to when processing will be completed, giving the reason for the delay. The operator shall, within 5 working days of the filing date, or such other time as may be convenient for the operator, participate in a field inspection if requested by the authorized officer. Signing of the notice of intent by the operator shall signify agreement to comply with the terms and conditions contained therein and in this part, and with all practices and procedures specified at any time by the authorized officer.

§ 3151.2 Notice of completion of operations.

Upon completion of exploration, there shall be filed with the District Manager a Notice of Completion of Oil and Gas Exploration Operations. Within 30 days after this filing, the authorized officer shall notify the party whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary, specifying the nature and extent of actions to be taken by the operator.

Subpart 3152—Exploration in Alaska

§ 3152.1 Application for oil and gas geophysical exploration permit.

Parties wishing to conduct oil and gas geophysical exploration operations in Alaska shall complete an application for an oil and gas geophysical exploration permit. The application shall contain the following information:

(a) The applicant's name and address;

(b) The operator's name and address;

(c) The contractor's name and address;

(d) A description of lands involved by township and range, including a map or overlays showing the lands to be entered and affected;

(e) The period of time when operations will be conducted; and

(f) A plan for conducting the exploration operations.

The application shall be submitted, along with a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a lease held by or on behalf of the lessee), to the District Manager of the proper BLM office.

§ 3152.2 Action on application.

(a) The authorized officer shall review each application and approve or disapprove it within 90 calendar days, unless compliance with statutory requirements such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) delays this action. The applicant shall be notified promptly in writing of any such delay.

(b) The authorized officer shall include in each geophysical exploration permit terms and conditions deemed necessary to protect values, mineral resources, and nonmineral resources. Geophysical permits within National Petroleum Reserve—Alaska shall contain such reasonable conditions, restrictions and prohibitions as the authorized officer deems appropriate to mitigate adverse effects upon the surface resources of the Reserve and to satisfy the requirement of section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (42

U.S.C. 6504) (See part 3130 for stipulations relating to the National Petroleum Reserve—Alaska).

(c) An exploration permit shall become effective on the date specified by the authorized officer and shall expire 1 year thereafter.

(d) For lands subject to section 1008 of the Alaska National Interest Lands Conservation Act, exploration shall be authorized only upon a determination that such activities can be conducted in a manner which is consistent with the purposes for which the affected area is managed under applicable law.

§ 3152.3 Renewal of exploration permit.

Upon application by the permittee and payment of a nonrefundable filing fee of $25 (except where the exploration operations are to be conducted on a leasehold by or on behalf of the lessee), an exploration permit may be renewed for a period not to exceed 1 year.

§ 3152.4 Relinquishment of exploration permit.

Subject to the continued obligations of the permittee and the surety to comply with the terms and conditions of the exploration permit and the regulations, the permittee may relinquish an exploration permit for all or any portion of the lands covered by it. Such relinquishment shall be filed with the District Manager of the proper BLM office.

§ 3152.5 Modification of exploration permit.

(a) A permittee may request, and the authorized officer may approve a modification of an exploration permit.

(b) The authorized officer may, after consultation with the permittee, require modifications determined necessary.

§ 3152.6 Collection and submission of data.

(a) The permittee shall submit to the authorized officer all data and information obtained in carrying out the exploration plan.

(b) The Bureau shall not release such data and information and any processed analyzed and interpreted material until such time as disclosure would not adversely affect, in the opinion of the authorized officer, the competitive position of the permittee.

§ 3152.7 Completion of operations.

(a) The permittee shall submit to the authorized officer a completion report within 30 days of completion of all operations under the permit. The completion report shall contain the following:

(1) A description of all work performed;

(2) Charts, maps or plats depicting the areas and blocks in which the exploration was conducted and specifically identifying the lines of geophysical traverses and any roads constructed;

(3) The dates on which the actual exploration was conducted;

(4) Such other information about the exploration operations as may be specified by the authorized officer in the permit; and

(5) A statement that all terms and conditions have been complied with or that corrective measures shall be taken to rehabilitate the lands or other resources.

(b) Within 90 days after the authorized officer receives a completion report from the permittee that exploration has been completed or after the expiration of the permit, whichever occurs first, the authorized officer shall notify the permittee of the specific nature and extent of any additional measures required to rectify any damage to the lands and resources.

[53 FR 17359, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

Subpart 3153—Exploration of Lands Under the Jurisdiction of the Department of Defense

§ 3153.1 Geophysical permit requirements.

Except in unusual circumstances, permits for geophysical exploration on unleased lands under the jurisdiction of the Department of Defense shall be issued by the appropriate agency of that Department. In the event an agency of the Department of Defense refers an application for exploration to the Bureau for issuance, the provisions of subpart 3152 of this title shall apply. Geophysical exploration on lands under the jurisdiction of the Department of Defense shall be authorized only with the consent of, and subject to such terms and conditions as may be required by, the Department of Defense.

Subpart 3154—Bond Requirements

§ 3154.1 Types of bonds.

Prior to each planned exploration, the party(s) filing the notice of intent or application for a permit shall file with the authorized officer a bond as described in § 3104.1 of this title in the amount of at least $5,000, conditioned upon full and faithful compliance with the terms and conditions of this subpart and the notice of intent or permit. In lieu thereof, the party(s) may file a statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State or a nationwide bond in the amount of $50,000 covering all oil and gas exploration operations in the nation. Holders of individual, statewide or nationwide oil and gas lease bonds shall be allowed to conduct exploration on their leaseholds without further bonding, and holders of statewide or nationwide lease bonds wishing to conduct exploration on lands they do not have under lease may obtain a rider to include oil and gas exploration operations under this part. Holders of nationwide or any National Petroleum Reserve-Alaska oil and gas lease bonds shall be permitted to obtain a rider to include the coverage of oil and gas exploration within the National Petroleum Reserve—Alaska under subpart 3152 of this title.

§ 3154.2 Additional bonding.

The authorized officer may increase the amount of any bond that is required under this subpart after determining that additional coverage is needed to ensure protection of the lands or resources.

§ 3154.3 Bond cancellation or termination of liability.

The authorized officer shall not consent to the cancellation of the bond or the termination of liability unless and until the terms and conditions of the notice of intent or permit have been met. Should the authorized officer fail to notify the party within 90 days of the filing of a notice of completion of the need for additional action by the operator to rehabilitate the lands, liability for that particular exploration operation shall automatically terminate.

[53 FR 17359, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

PART 3160—ONSHORE OIL AND GAS OPERATIONS

NOTE 1: The information collection requirements contained in part 3160 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned the following Clearance Numbers:

OPERATING FORMS

Form No	Name and filing date	OMB No
3160-3	Application for Permit to Drill, Deepen, or Plug Back—Filed 30 days prior to planned action	1004-0136
3160-4	Well Completion of Recompletion Report and Log—Due 30 days after well completed	1004-0137
3160-5	Sundry Notice and Reports on Wells—Subsequent report due 30 days after operations completed	1004-0135
3160-6	Monthly Report of Operation (and Continuation)—Due 10th day of second month following operation month	1004-0138

The above information is being collected for Federal and Indian lease management purposes. The information will be used to allow evaluation of the technical, safety, and environmental factors involved with drilling and producing oil and gas on Federal and Indian oil and gas leases. The obligation to respond is mandatory only if the operator elects to initiate drilling, completion, or subsequent operations on an oil and gas well. The Monthly Report of Operations is mandatory after drilling has commenced.

Other Reporting Requirements

The information collection requirements contained in §§ 3162.3, 3162.3-1, 3162.3-2, 3162.3-3, 3162.3-4, 3162.4-1, 3162.4-2, 3162.5-1, 3162.5-2, 3162.5-3, 3162.6, 3162.7-1, 3162.7-2, 3162.7-3, 3162.7-5, 3164.3, 3165.1

and 3165.3 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1004-0134. The information may be collected from some operators to either provide data so that proposed operations may be approved or to enable the monitoring of compliance with granted approval. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain the benefit under the lease.

(See 47 FR 47765, Oct. 27, 1982. Redesignated at 48 FR 36583–36586, Aug. 12, 1983, and amended at 52 FR 5390, Feb. 20, 1987; 52 FR 36577, Sept. 30, 1987; 53 FR 17361, May 16, 1988)

Note 2: There are many leases and agreements currently in effect, and which will remain in effect, involving both Federal and Indian oil and gas leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements also often specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR part 221 or specific sections thereof, which now means 43 CFR part 3160. Those references shall now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or Minerals Management Service, as appropriate.

Subpart 3160—Onshore Oil and Gas Operations: General

Sec.
3160.0-1 Purpose.
3160.0-2 Policy.
3160.0-3 Authority.
3160.0-4 Objectives.
3160.0-5 Definitions.
3160.0-7 Cross references.

Subpart 3161—Jurisdiction and Responsibility

3161.1 Jurisdiction.
3161.2 Responsibility of the authorized officer.
3161.3 Inspections.

Subpart 3162—Requirements for Operating Rights Owners and Operators

3162.1 General requirements.
3162.2 Drilling and producing obligations.
3162.3 Conduct of operations.
3162.3-1 Drilling applications and plans.
3162.3-2 Subsequent well operations.
3162.3-3 Other lease operations.
3162.3-4 Well abandonment.
3162.4 Records and reports.
3162.4-1 Well records and reports.
3162.4-2 Samples, tests, and surveys.
3162.4-3 Monthly report of operations (Form 3160-6).
3162.5 Environment and safety.
3162.5-1 Environmental obligations.
3162.5-2 Control of wells.
3162.5-3 Safety precautions.
3162.6 Well and facility identification.
3162.7 Measurement, disposition, and protection of production.
3162.7-1 Disposition of production.
3162.7-2 Measurement of oil.
3162.7-3 Measurement of gas.
3162.7-4 Royalty rates on oil; sliding and step-scale leases (public land only).
3162.7-5 Site security on Federal and Indian (except Osage) oil and gas leases.
3162.8 Confidentiality.

Subpart 3163—Noncompliance, Assessments, and Penalties

3163.1 Remedies for acts of noncompliance.
3163.2 Civil penalties.
3163.3 Criminal penalties.
3163.4 Failure to pay.
3163.5 Assessments and civil penalties.
3163.6 Injunction and specific performance.

Subpart 3164—Special Provisions

3164.1 Onshore Oil and Gas Orders.
3164.2 NTL's and other implementing procedures.
3164.3 Surface rights.
3164.4 Damages on restricted Indian lands.

Subpart 3165—Relief, Conflicts, and Appeals

3165.1 Relief from operating and producing requirements.
3165.1-1 Relief from royalty and rental requirements.
3165.2 Conflicts between regulations.
3165.3 Notice, State Director review and hearing on the record.
3165.4 Appeals.

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Act of May 31, 1930 (30 U.S.C. 301-306); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

SOURCE: 47 FR 47765, Oct. 27, 1982, unless otherwise noted. Redesignated at 48 FR 36583-36586, Aug. 12, 1983.

EDITORIAL NOTES:

NOTE 1. See Redesignation Table No. 1 appearing in the Finding Aids section of this volume.

NOTE 2. Nomenclature changes to this part appear at 48 FR 36584-36586, Aug. 12, 1983.

Subpart 3160—Onshore Oil and Gas Operations: General

§ 3160.0-1 Purpose.

The regulations in this part govern operations associated with the exploration, development and production of oil and gas deposits from leases issued or approved by the United States, restricted Indian land leases and those under the jurisdiction of the Secretary of the Interior by law or administrative arrangement, including the National Petroleum Reserve—Alaska.

[48 FR 36583, Aug. 12, 1983]

§ 3160.0-2 Policy.

The regulations in this part are administered under the direction of the Director of the Bureau of Land Management; except that as to lands within naval petroleum reserves, they shall be administered under such official as the Secretary of Energy shall designate.

[48 FR 36584, Aug. 12, 1983]

§ 3160.0-3 Authority.

The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301-306), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. § 441 (43 U.S.C. 1457), the Attorney General's Opinion of April 2, 1941 (40 Op Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (94 Stat. 2964), the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983) under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

[48 FR 36583, Aug. 12, 1983]

§ 3160.0-4 Objectives.

The objective of these regulations is to promote the orderly and efficient exploration, development and production of oil and gas.

[48 FR 36583, Aug. 12, 1983]

§ 3160.0-5 Definitions.

As used in this part, the term:

(a) *Authorized representative* means any entity or individual authorized by the Secretary to perform duties by cooperative agreement, delegation or contract.

(b) *Avoidably lost* means the venting or flaring of produced gas without the prior authorization, approval, ratification or acceptance of the authorized officer and the loss of produced oil or gas when the authorized officer determines that such loss occurred as a result of:

(1) Negligence on the part of the operator; or

(2) The failure of the operator to take all reasonable measures to prevent and/or control the loss; or

(3) The failure of the operator to comply fully with the applicable lease terms and regulations, applicable orders and notices, or the written orders of the authorized officer; or

(4) Any combination of the foregoing.

(c) *Federal lands* means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

(d) *Fresh water* means water containing not more than 1,000 ppm of total dissolved solids, provided that such water does not contain objectionable levels of any constituent that is toxic to animal, plant or acquatic life, unless otherwise specified in applicable notices or orders.

(e) *Knowingly or willfully* means a violation that constitutes the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of the law, regulations, orders, or terms of the lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistakes or mere inadvertency. Conduct that is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

(f) *Lease* means any contract, profit-share arrangement, joint venture or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of or removal of oil or gas.

(g) *Lease site* means any lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized under a lease.

(h) *Lessee* means a person or entity holding record title in a lease issued by the United States.

(i) *Lessor* means the party to a lease who holds legal or beneficial title to the mineral estate in the leased lands.

(j) *Major violation* means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

(k) *Maximum ultimate economic recovery* means the recovery of oil and gas from leased lands which a prudent operator could be expected to make from that field or reservoir given existing knowledge of reservoir and other pertinent facts and utilizing common industry practices for primary, secondary or tertiary recovery operations.

(l) *Minor violation* means noncompliance that does not rise to the level of a *major violation.*

(m) *New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act* means the date on which a well commences production, or resumes production after having been off production for more than 90 days, and is to be construed as follows:

(1) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs; and

(2) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

(n) *Notice to lessees and operators (NTL)* means a written notice issued by the authorized officer. NTL's implement the regulations in this part and operating orders, and serve as instructions on specific item(s) of importance within a State, District, or Area.

(o) *Onshore oil and gas order* means a formal numbered order issued by the Director that implements and supplements the regulations in this part.

(p) *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

(q) *Operator* means any person or entity including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(r) *Paying well* means a well that is capable of producing oil or gas of sufficient value to exceed direct operating costs and the costs of lease rentals or minimum royalty.

(s) *Person* means any individual, firm, corporation, association, partnership, consortium or joint venture.

(t) *Production in paying quantities* means production from a lease of oil and/or gas of sufficient value to exceed direct operating costs and the cost of lease rentals or minimum royalties.

(u) *Superintendent* means the superintendent of an Indian Agency, or other officer authorized to act in matters of record and law with respect to oil and gas leases on restricted Indian lands.

(v) *Surface use plan of operations* means a plan for surface use, disturbance, and reclamation.

(w) *Waste of oil or gas* means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

[53 FR 17362, May 16, 1988, as amended at 53 FR 22846, June 17, 1988]

§ 3160.0–7 Cross references.

25 CFR parts 221, 212, 213, and 227
30 CFR Group 200
40 CFR Chapter V
43 CFR parts 2, 4, and 1820 and Groups 3000, 3100 and 3500

[48 FR 36584, Aug. 12, 1983]

Subpart 3161—Jurisdiction and Responsibility

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by the operator are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

[52 FR 5391, Feb. 20, 1987, as amended at 53 FR 17362, May 16, 1988]

§ 3161.2 Responsibility of the authorized officer.

The authorized officer is authorized and directed to approve unitization, communitization, gas storage and other contractual agreements for Federal lands; to assess compensatory royalty; to approve suspensions of operations or production, or both; to issue NTL's: to approve and monitor other operator proposals for drilling, development or production of oil and gas; to perform administrative reviews; to impose monetary assessments or penalties; to provide technical information and advice relative to oil and gas development and operations on Federal and Indian lands; to enter into cooperative agreements with States, Federal agencies and Indian tribes relative to oil and gas development and operations; to approve, inspect and regulate the operations that are subject to the regulations in this part; to require compliance with lease terms, with the regulations in this title and all other applicable regulations promulgated under the cited laws; and to require that all operations be conducted in a manner which protects other natural resources and the environmental quality, protects life and property and results in the maximum ultimate recovery of oil and gas with minimum waste and with minimum adverse effect on the ultimate recovery of other mineral resources. The authorized officer may issue written or oral orders to govern specific lease operations. Any such oral orders shall be confirmed in writing by the authorized officer within 10 working days from issuance thereof. Before approving operations on leasehold, the authorized officer shall determine that the lease is in effect, that acceptable bond coverage has been provided and that the proposed plan of operations is sound both from a technical and environmental standpoint.

[48 FR 36584, Aug. 12, 1983, as amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17362, May 16, 1988]

§ 3161.3 Inspections.

(a) The authorized officer shall establish procedures to ensure that each Federal and Indian lease site which is producing or is expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually. Similarly, each lease site on non-Federal or non-Indian lands subject to a formal agreement such as a unit or communitization agreement which has been approved by the Department of the Interior and in which the United States or the Indian lessors share in production shall be inspected annually whenever any of the foregoing criteria are applicable.

(b) In accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

[49 FR 37365, Sept. 21, 1984, as amended at 52 FR 5391, Feb. 20, 1987]

Subpart 3162—Requirements for Operating Rights Owners and Operators

§ 3162.1 General requirements.

(a) The operating rights owner or operator, as appropriate, shall comply with applicable laws and regulations; with the lease terms, Onshore Oil and Gas Orders, NTL's; and with other orders and instructions of the authorized officer. These include, but are not limited to, conducting all operations in a manner which ensures the proper handling, measurement, disposition, and site security of leasehold production; which protects other natural resources and environmental quality; which protects life and property; and which results in maximum ultimate economic recovery of oil and gas with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources.

(b) The operator shall permit properly identified authorized representatives to enter upon, travel across and inspect lease sites and records normally kept on the lease pertinent thereto without advance notice. Inspections normally will be conducted during those hours when responsible persons are expected to be present at the operation being inspected. Such permission shall include access to secured facilities on such lease sites for the purpose of making any inspection or investigation for determining whether there is compliance with the mineral leasing laws, the regulations in this part, and any applicable orders, notices or directives.

(c) For the purpose of making any inspection or investigation, the Secretary or his authorized representative shall have the same right to enter upon or travel across any lease site as the operator has acquired by purchase, condemnation or otherwise.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 53 FR 17363, May 16, 1988]

§ 3162.2 Drilling and producing obligations.

(a) The operating rights owner shall drill diligently and produce continuously from such wells as are necessary to protect the lessor from loss of royalty by reason of drainage. The authorized officer may assess compensatory royalty under which the operating rights owner shall pay a sum determined by the authorized officer as adequate to compensate the lessor for operating rights owner's failure to drill and produce wells required to protect the lessor from loss through drainage by wells on adjacent lands. Any such assessment will be made after a review of available information relating to development of the leased lands. Such assessment is subject to termination or modification based upon the authorized officer's continuing review of such information.

(b) The operator, at its election, may drill and produce other wells in conformity with any system of well spacing or production allotments affecting the field or area in which the leased lands are situated, and which is authorized and sanctioned by applicable law or by the authorized officer.

(c) After notice in writing, the operating rights owner shall promptly drill and produce such other wells as the authorized officer may reasonably require in order that the lease may be properly and timely developed and produced in accordance with good economic operating practices.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988]

§ 3162.3 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with § 3106.6 and subpart 3104 of this title.

(b) A contractor on a leasehold shall be considered the agent of the operator for such operations with full responsibility for acting on behalf of the operator for purposes of complying with applicable laws, regulations, the lease terms, NTL's, Onshore Oil and Gas Orders, and other orders and instructions of the authorized officer.

[53 FR 17363, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§ 3162.3-1 Drilling applications and plans.

(a) Each well shall be drilled in conformity with an acceptable well-spacing program at a surveyed well location approved or prescribed by the authorized officer after appropriate environmental and technical reviews (see § 3162.5-1 of this title). An acceptable well-spacing program may be either (1) one which conforms with a spacing order or field rule issued by a State Commission or Board and accepted by the authorized officer, or (2) one which is located on a lease committed to a communitized or unitized tract at a location approved by the authorized officer, or (3) any other program established by the authorized officer.

(b) Any well drilled on restricted Indian land shall be subject to the location restrictions specified in the lease and/or Title 25 of the CFR.

(c) The operator shall submit to the authorized officer for approval an Application for Permit to Drill for each well. No drilling operations, nor surface disturbance preliminary thereto, may be commenced prior to the authorized officer's approval of the permit.

(d) The Application for Permit to Drill process shall be initiated at least 30 days before commencement of operations is desired. Prior to approval, the application shall be administratively and technically complete. A complete application consists of Form 3160-3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by

paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations, and

(4) Such other information as may be required by applicable orders and notices.

(e) Each drilling plan shall contain the information specified in applicable notices or orders, including a description of the drilling program, the surface and projected completion zone location, pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards. A drilling plan may be submitted for a single well or for several wells proposed to be drilled to the same zone within a field or area of geological and environmental similarity. A drilling plan may be modified from time to time as circumstances may warrant, with the approval of the authorized officer.

(f) The surface use plan of operations shall contain information specified in applicable orders or notices, including the road and drillpad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require. A surface use plan of operations may be submitted for a single well or for several wells proposed to be drilled in an area of environmental similarity.

(g) For Federal lands, upon receipt of the Application for Permit to Drill or Notice of Staking, the authorized officer shall post the following information for public inspection at least 30 days before action to approve the Application for Permit to Drill: the company/operator name; the well name/number; the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased and of all leases already issued in the general area; and any substantial modifications to the lease terms. Where the inclusion of maps in such posting is not practicable, maps of the affected lands shall be made available to the public for review. This information also shall be provided promptly by the authorized officer to the appropriate office of the Federal surface management agency, for lands the surface of which is not under Bureau jurisdiction, requesting such agency to post the proposed action for public inspection for at least 30 days. The posting shall be in the office of the authorized officer and in the appropriate surface managing agency if other than the Bureau. The posting of an Application for Permit to Drill is for information purposes only and is not an appealable decision.

(h) Upon initiation of the Application for Permit to Drill process, the authorized officer shall consult with the appropriate Federal surface management agency and with other interested parties as appropriate and shall take one of the following actions as soon as practical, but in no event later than 5 working days after the conclusion of the 30-day notice period for Federal lands, or within 30 days from receipt of the application for Indian lands:

(1) Approve the application as submitted or with appropriate modifications or conditions;

(2) Return the application and advise the applicant of the reasons for disapproval; or

(3) Advise the applicant, either in writing or orally with subsequent written confirmation, of the reasons why final action will be delayed along with the date such final action can be expected.

The surface use plan of operations for National Forest System lands shall be approved by the Secretary of Agriculture or his/her representative prior to approval of the Application for Permit to Drill by the authorized officer. Appeals from the denial of approval of such surface use plan of operations shall be submitted to the Secretary of Agriculture.

(i) Approval of the Application for Permit to Drill does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct drilling operations.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22846, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3162.3-2 Subsequent well operations.

(a) A proposal for further well operations shall be submitted by the operator on Form 3160-5 for approval by the authorized officer prior to commencing operations to redrill, deepen, perform casing repairs, plug-back, alter casing, perform nonroutine fracturing jobs, recomplete in a different interval, perform water shut off, commingling production between intervals and/or conversion to injection. If there is additional surface distubance, the proposal shall include a surface use plan of operations. A subsequent report on these operations also will be filed on Form 3160-5. The authorized officer may prescribe that each proposal contain all or a portion of the information set forth in § 3162.3-1 of this title.

(b) Unless additional surface disturbance is involved and if the operations conform to the standard of prudent operating practice, prior approval is not required for routine fracturing or acidizing jobs, or recompletion in the same interval; however, a subsequent report on these operations must be filed on Form 3160-5.

(c) No prior approval or a subsequent report is required for well cleanout work, routine well maintenance, or bottom hole pressure surveys.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§ 3162.3-3 Other lease operations.

Prior to commencing any operation on the leasehold which will result in additional surface disturbance, other than those authorized under § 3162.3-1 or § 3162.3-2 of this title, the operator shall submit a proposal on Form 3160-5 to the authorized officer for approval. The proposal shall include a surface use plan of operations.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, and amended at 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§ 3162.3-4 Well abandonment.

(a) The operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless the authorized officer shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. In the case of a newly drilled or recompleted well, the approval to abandon may be written or oral with written confirmation.

(b) Completion of a well as plugged and abandoned may also include conditioning the well as water supply source for lease operations or for use by the surface owner or appropriate Government Agency, when authorized by the authorized officer. All costs over and above the normal plugging and abandonment expense will be paid by the party accepting the water well.

(c) No well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer. The authorized officer may authorize a delay in the permanent abandonment of a well for a period of 12 months. When justified by the operator, the authorized officer may authorize additional delays, no one of which may exceed an additional 12 months. Upon the removal of drilling or producing equipment from the site of a well which is to be permanently abandoned, the surface of the lands disturbed in connection with the conduct of operations shall be reclaimed in accordance with a plan first approved or prescribed by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§ 3162.4 Records and reports.

§ 3162.4-1 Well records and reports.

(a) The operator shall keep accurate and complete records with respect to all lease operations including, but not limited to, production facilities and equipment, drilling, producing, redrilling, deepening, repairing, plugging back, and abandonment operations, and other matters pertaining to operations. With respect to production facilities and equipment, the record shall include schematic diagrams as required by applicable orders and notices.

(b) Standard forms for providing basic data are listed in NOTE 1 at the beginning of this title. As noted on Form 3160-4, two copies of all electric and other logs run on the well must be submitted to the authorized officer. Upon request, the operator shall transmit to the authorized officer copies of such other records maintained in compliance with paragraph (a) of this section.

(c) Not later than the 5th business day after any well begins production on which royalty is due anywhere on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off production for more than 90 days, the operator shall notify the authorized officer by letter or sundry notice, Form 3160-5, or orally to be followed by a letter or sundry notice, of the date on which such production has begun or resumed.

(d) All records and reports required by this section shall be maintained for 6 years from the date they were generated. In addition, if the Secretary, or his/her designee notifies the recordholder that the Department of the Interior has initiated or is participating in an audit or investigation involving such records, the records shall be maintained until the Secretary, or his/her designee, releases the recordholder from the obligation to maintain such records.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 52 FR 5391, Feb. 20, 1987; 53 FR 17363, May 16, 1988]

§ 3162.4-2 Samples, tests, and surveys.

(a) During the drilling and completion of a well, the operator shall, when required by the authorized officer, conduct tests, run logs, and make other surveys reasonably necessary to determine the presence, quantity, and quality of oil, gas, other minerals, or the presence or quality of water; to determine the amount and/or direction of deviation of any well from the vertical; and to determine the relevant characteristics of the oil and gas reservoirs penetrated.

(b) After the well has been completed, the operator shall conduct periodic well tests which will demonstrate the quantity and quality of oil and gas and water. The method and frequency of such well tests will be specified in appropriate notices and orders. When needed, the operator shall conduct reasonable tests which will demonstrate the mechanical integrity of the downhole equipment.

(c) Results of samples, tests, and surveys approved or prescribed under this section shall be provided to the authorized officer without cost to the lessor.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988]

§ 3162.4-3 Monthly report of operations (Form 3160-6).

The operator shall report production data to BLM in accordance with the requirements of this section until required to begin reporting to MMS pursuant to 30 CFR 216.50. When reporting production data to BLM in accordance with the requirements of this section, the operator shall either use Form BLM 3160-6 or Form MMS- 3160. A separate report of operations for each lease shall be made on Form 3160-6 for each calendar month, beginning with the month in which drilling operations are initiated, and shall be filed with the authorized officer on or before the 10th day of the second month following the operation month, unless an extension of time for the filing of such report is granted by the authorized officer. The report on this form shall disclose accurately all operations conducted on each well during each month, the status of operations on the last day of the month, and a general summary of the status of operations on the leased lands, and the report shall be submitted each month until the lease is terminated or until omission of the report is authorized by the authorized officer. It is particularly necessary that the report shall show for each calendar month:

(a) The lease be identified by inserting the name of the United States land office and the serial number, or in the case of Indian land, the lease number and lessor's name, in the space provided in the upper right corner;

(b) Each well be listed separately by number, its location be given by 40-acre subdivision (¼ ¼ sec. or lot), section number, township, range, and meridian;

(c) The number of days each well produced, whether oil or gas, and the number of days each input well was in operation be stated;

(d) The quantity of oil, gas and water produced, the total amount of gasoline, and other lease products recovered, and other required information. When oil and gas, or oil, gas and gasoline, or other hydrocarbons are concurrently produced from the same lease, separate reports on this form should be submitted for oil and for gas and gasoline, unless otherwise authorized or directed by the authorized officer.

(e) The depth of each active or suspended well, and the name, character, and depth of each formation drilled during the month, the date each such depth was reached, the date and reason for every shut-down, the names and depths of important formation changes and contents of formations, the amount and size of any casing run since last report, the dates and results of any tests such as production, water shut-off, or gasoline content, and any other noteworthy information on operations not specifically provided for in the form.

(f) The footnote shall be completely filled out as required by the authorized officer. If no runs or sales were made during the calendar month, the report shall so state.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983; 52 FR 5391, Feb. 20, 1987; 53 FR 16413, May 9, 1988]

§ 3162.5 Environment and safety.

§ 3162.5–1 Environmental obligations.

(a) The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan. Before approving any Application for Permit to Drill submitted pursuant to § 3162.3-1 of this title, or other plan requiring environmental review, the authorized officer shall prepare an environmental record of review or an environmental assessment, as appropriate. These environmental documents will be used in determining whether or not an environmental impact statement is required and in determining any appropriate terms and conditions of approval of the submitted plan.

(b) The operator shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements. All produced water must be disposed of by injection into the subsurface, by approved pits, or by other methods which have been approved by the authorized officer. Upon the conclusion of operations, the operator shall reclaim the disturbed surface in a manner approved or reasonably prescribed by the authorized officer.

(c) All spills or leakages of oil, gas, produced water, toxic liquids, or waste materials, blowouts, fires, personal injuries, and fatalities shall be reported by the operator in accordance with these regulations and as prescribed in applicable order or notices. The operator shall exercise due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants and to extinguish fires. An operator's compliance with the requirements of the regulations in this part shall not relieve the operator of the obligation to comply with other applicable laws and regulations.

(d) When reasonably required by the authorized officer, a contingency plan shall be submitted describing procedures to be implemented to protect life, property, and the environment.

(e) The operator's liability for damages to third parties shall be governed by applicable law.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988; 53 FR 22847, June 17, 1988]

§ 3162.5-2 Control of wells.

(a) *Drilling wells.* The operator shall take all necessary precautions to keep each well under control at all times, and shall utilize and maintain materials and equipment necessary to insure the safety of operating conditions and procedures.

(b) *Vertical drilling.* The operator shall conduct drilling operations in a manner so that the completed well does not deviate significantly from the vertical without the prior written approval of the authorized officer. Significant deviation means a projected deviation of the well bore from the vertical of 10° or more, or a projected bottom hole location which could be less than 200 feet from the spacing unit or lease boundary. Any well which deviates more than 10° from the vertical or could result in a bottom hole location less than 200 feet from the spacing unit or lease boundary without prior written approval must be promptly reported to the authorized officer. In these cases, a directional survey is required.

(c) *High pressure or loss of circulation.* The operator shall take immediate steps and utilize necessary resources to maintain or restore control of any well in which the pressure equilibrium has become unbalanced.

(d) *Protection of fresh water and other minerals.* The operator shall isolate freshwater-bearing and other usable water containing 5,000 ppm or less of dissolved solids and other mineral-bearing formations and protect them from contamination. Tests and surveys of the effectiveness of such measures shall be conducted by the operator using procedures and practices approved or prescribed by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988]

§ 3162.5-3 Safety precautions.

The operator shall perform operations and maintain equipment in a safe and workmanlike manner. The operator shall take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property. Compliance with health and safety requirements prescribed by the authorized officer shall not relieve the operator of the responsibility for compliance with other pertinent health and safety requirements under applicable laws or regulations.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17363, May 16, 1988]

§ 3162.6 Well and facility identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, the operator shall properly identify, by a sign in a conspicuous place, each well, other than those permanently abandoned. The well sign shall include the well number, the name of the operator, the lease serial number, the surveyed location (the quarter-quarter section, section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the unit or communitization name or number. The authorized officer may also require the sign to include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual well signs in place on the effective date of this rulemaking which do not have the unit or communitization agreement number or do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communitization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All abandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a permanent monument may be waived in writing by the authorized officer.

[52 FR 5391, Feb. 20, 1987, as amended at 53 FR 17363, May 16, 1988]

§ 3162.7 Measurement, disposition, and protection of production.

§ 3162.7-1 Disposition of production.

(a) The operator shall put into marketable condition, if economically feasible, all oil, other hydrocarbons, gas, and sulphur produced from the leased land.

(b) Where oil accumulates in a pit, such oil must either be (1) recirculated through the regular treating system and returned to the stock tanks for sale, or (2) pumped into a stock tank without treatment and measured for sale in the same manner as from any sales tank in accordance with applicable orders and notices. In the absence of prior approval from the authorized officer, no oil should go to a pit except in an emergency. Each such occurrence must be reported to the authorized officer and the oil promptly recovered in accordance with applicable orders and notices.

(c)(1) Any person engaged in transporting by motor vehicle any oil from any lease site, or allocated to any such lease site, shall carry on his/her person, in his/her vehicle, or in his/her immediate control, documentation showing at a minimum; the amount, origin, and intended first purchaser of the oil.

(2) Any person engaged in transporting any oil or gas by pipeline from any lease site, or allocated to any lease site, shall maintain documentation showing, at a minimum, the amount, origin, and intended first purchaser of such oil or gas.

(3) On any lease site, any authorized representative who is properly identified may stop and inspect any motor vehicle that he/she has probable cause to believe is carrying oil from any such lease site, or allocated to such lease site, to determine whether the driver possesses proper documentation for the load of oil.

(4) Any authorized representative who is properly identified and who is accompanied by an appropriate law enforcement officer, or an appropriate law enforcement officer alone, may stop and inspect any motor vehicle which is not on a lease site if he/she has probable cause to believe the vehicle is carrying oil from a lease site, or allocated to a lease site, to determine whether the driver possesses proper documentation for the load of oil.

(d) The operator shall conduct operations in such a manner as to prevent avoidable loss of oil and gas. A operator shall be liable for royalty payments on oil or gas lost or wasted from a lease site, or allocated to a lease site, when such loss or waste is due to negligence on the part of the operator of such lease, or due to the failure of the operator to comply with any regulation, order or citation issued pursuant to this part.

(e) When requested by the authorized officer, the operator shall furnish storage for royalty oil, on the leasehold or at a mutually agreed upon delivery point off the leased land without cost to the lessor, for 30 days following the end of the calendar month in which the royalty accrued.

(f) Any records generated under this section shall be maintained for 6 years from the date they were generated or, if notified by the Secretary, or his designee, that such records are involved in an audit or investigation, the records shall be maintained until the recordholder is released by the Secretary from the obligation to maintain them.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 53 FR 17363, May 16, 1988]

§ 3162.7-2 Measurement of oil.

All oil production shall be measured on the lease by tank gauging, positive displacement metering system, or other methods acceptable to the authorized officer, pursuant to methods and procedures prescribed in applicable orders and notices. Where production cannot be measured due to spillage or leakage, the amount of production shall be determined in accordance with the methods and procedures approved or prescribed by the authorized officer. Off-lease storage or measurement, or commingling with production from other sources prior to measurement, may be approved by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 52 FR 5392, Feb. 20, 1987]

§ 3162.7-3 Measurement of gas.

All gas production shall be measured by orifice meters or other methods acceptable to the authorized officer on the lease pursuant to methods and procedures prescribed in applicable orders and notices. The measurement of the volume of all gas produced shall be adjusted by computation to the standard pressure and temperature of 14.73 psia and 60° F unless otherwise prescribed by the authorized officer, regardless of the pressure and temperature at which the gas is actually measured. Gas lost without measurement by meter shall be estimated in accordance with methods prescribed in applicable orders and notices. Off-lease measurement or commingling with production from other sources prior to measurement may be approved by the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983; 49 FR 37364, Sept. 21, 1984; 52 FR 5392, Feb. 20, 1987]

§ 3162.7-4 Royalty rates on oil; sliding and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The authorized officer will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on the basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the authorized officer as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No. and record	Count (marked X)
1. Produced full time for 30 days	X
2. Produced for 26 days, down 4 days for repairs	X
3. Produced for 28 days, down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 26, 24 hours, pulling rods and tubing	X
4. Produced for 12 days, down June 13 to 30	
5. Produced for 8 hours every day (head well)	X
6. Idle producer (not operated)	
7. New well, completed June 17, produced for 14 days	X
8. New well, completed June 22, produced for 9 days	

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

[53 FR 1226, Jan. 15, 1988, as amended at 53 FR 17364, May 16, 1988]

§ 3162.7–5 Site security on Federal and Indian (except Osage) oil and gas leases.

(a) *Definitions.*

Appropriate valves. Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation.

Effectively sealed. The placement of a seal in such a manner that the position of the sealed valve may not be altered without the seal being destroyed.

Production phase. That period of time or mode of operation during which crude oil is delivered directly to or through production vessels to the storage facilities and includes all operations at the facility other than those defined by the sales phase.

Sales phase. That period of time or mode of operation during which crude oil is removed from the storage facilities for sales, transportation or other purposes.

Seal. A device, uniquely numbered, which completely secures a valve.

(b) *Minimum Standards.* Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing, excluding the seals, shall be located at the site. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Lease Automatic Custody Transfer (LACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the LACT. All components of the LACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the LACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the LACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a bypass.

(4) For oil measured and sold by hand gauging, all appropriate valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(7) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by appicable NTL's or onshore Orders while the oil is removed and transported.

(8) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(9) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section wil be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) *Site security plans.* (1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of oil/condensate production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communitization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) *Site facility diagrams.* (1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or following the inclusion of the facility into a federally supervised unit or communitization agreement.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8½" × 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment. The diagram need not be drawn to scale.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, metering system, and pits, if any, which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed and in what position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

[47 FR 47765, Oct. 27, 1982. Redesignated at 48 FR 36583-36586, Aug. 12, 1983, and amended at 52 FR 5392, Feb. 20, 1987. Redesignated at 53 FR 1218, Jan. 15, 1988; 53 FR 24688, June 30, 1988]

§ 3162.8 Confidentiality.

(a) Information obtained pursuant to this part and on file shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR part 2, except that:

(1) Upon request, information obtained from an operating rights owner or operator under this part that constitutes trade secrets and commercial or financial information which is privileged or confidential or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the operating rights owner or operator, as appropriate, for a period of 12 months;

(2) Upon expiration of the 12-month period, the operating rights owner or operator, as appropriate, may request that the data be held confidential for an additional 12-month period; and

(3) Upon termination of a lease, whether by expiration of its terms or otherwise, such information shall be made available to the public.

(b) Information requested to be kept confidential under this section shall be clearly identified by the operating rights owner or operator by marking each page of documents submitted with the words "CONFIDENTIAL INFORMATION" at the top of the page. All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection.

(c) Confidential and privileged information obtained from an operating rights owner or operator under this part on a restricted Indian lease shall be available only to the Tribe or allotted Indian lessor, their designated agent, or authorized U.S. Department of the Interior officials. Such information shall not be made available to any other party without the express authorization of the Tribe or alloted Indian lessor.

(d) Any geological, geophysical, or financial information which is either not required under the regulations in this part or covers lands not under Federal or Indian leases, but which the operating rights owner or operator submits to the authorized officer, shall be held confidential and shall not be released without the consent of the operating rights owner or operator, as appropriate.

(e) Trade secrets, proprietary and other confidential information obtained pursuant to this part shall be made available to States and Indian Tribes upon their request for the purpose of conducting an investigation if:

(1) Such State or Indian Tribe consents in writing to restrict the dissemination of the information to those who are directly involved in an investigation under a cooperative agreement approved by the Secretary, and who need to know;

(2) Such State or Indian Tribe accepts liability for wrongful disclosure;

(3) In the case of a State, such State demonstrates that such information is essential to the conduct of an investigation or to litigation; and

(4) In the case of an Indian Tribe, such Tribe demonstrates that such information is essential to the conduct of an investigation and waives sovereign immunity by express consent for wrongful disclosure by such Tribe.

(f) The United States shall not be liable for the wrongful disclosure by any individual, State, or Indian Tribe of any information provided to such individual, State, or Indian Tribe pursuant to any cooperative agreement or a delegation.

(g) Whenever any individual, State or Indian Tribe has obtained possession of information pursuant to a cooperative agreement or any individual or State has obtained possession of information pursuant to a delegation of authority, the individual shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to an officer or employee of the United States or of any Department or agency thereof and the State or Indian Tribe shall be subject to the same provisions of law with respect to the disclosure of such information as would apply to the United States or any Department or agency thereof. No State or State officer or employee who receives trade secrets, proprietary information or other confidential information under Title II of the Federal Oil and Gas Royalty Management Act may be required to disclose such information under State Law.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 49 FR 37364, Sept. 21, 1984; 53 FR 17364, May 16, 1988]

Subpart 3163—Noncompliance, Assessments, and Penalties

§ 3163.1 Remedies for acts of noncompliance.

(a) Whenever an operating rights owner or operator fails or refuses to comply with the regulations in this part, the terms of any lease or permit, or the requirements of any notice or order, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation or default. Such notice shall also set forth a reasonable abatement period:

(1) If the violation or default is not corrected within the time allowed, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of not more than $500 per day for each day nonabatement continues where the violation or default is deemed a major violation;

(2) Where noncompliance involves a minor violation, the authorized officer may subject the operating rights

owner or operator, as appropriate, to an assessment of $250 for failure to abate the violation or correct the default within the time allowed;

(3) When necessary for compliance, or where operations have been commenced without approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income, the authorized officer may shut down operations. Immediate shut-in action may be taken where operations are initiated and conducted without prior approval, or where continued operations could result in immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income. Shut-in actions for other situations may be taken only after due notice, in writing, has been given;

(4) When necessary for compliance, the authorized officer may enter upon a lease and perform, or have performed, at the sole risk and expense of the operator, operations that the operator fails to perform when directed in writing by the authorized officer. Appropriate charges shall include the actual cost of performance, plus an additional 25 percent of such amount to compensate the United States for administrative costs. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be entered;

(5) Continued noncompliance may subject the lease to cancellation and forfeiture under the bond. The operator shall be provided with a reasonable period of time either to take corrective action or to show why the lease should not be recommended for cancellation;

(6) Where actual loss or damage has occurred as a result of the operator's noncompliance, the actual amount of such loss or damage shall be charged to the operator.

(b) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. Upon discovery the following violations shall result in immediate assessments, which may be retroactive, in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500.

(c) Assessments under paragraph (a)(1) of this section shall not exceed $1,000 per day, per operating rights owner or operator, per lease. Assessments under paragraph (a)(2) of this section shall not exceed a total of $500 per operating rights owner or operator, per lease, per inspection.

(d) Continued noncompliance shall subject the operating rights owner or operator, as appropriate, to penalties described in § 3163.2 of this title.

(e) On a case-by-case basis, the State Director may compromise or reduce assessments under this section. In compromising or reducing the amount of the assessment, the State Director shall state in the record the reasons for such determination.

[52 FR 5393, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17364, May 16, 1988; 53 FR 22847, June 17, 1988]

§ 3163.2 Civil penalties.

(a) Whenever an operating rights owner or operator, as appropriate, fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under § 3163.1 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the operating rights owner or operator, as appropriate, shall be liable for a civil penalty of up to $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report. Any amount imposed and paid as assessments under the provisions of § 3163.1(a)(1) of this title shall be deducted from penalties under this section.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by any authorized representative, as provided in § 3162.7-1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160-5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operating rights owner or operator, per lease under paragraph (a) of this section or $10,000 per day, per operating rights owner or operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this

ction, the rate shall be $500, $10,000,
nd $25,000, respectively.
(2) For minor violations, no penalty
nder paragraph (a) of this section
hall be assessed unless:
(i) The operating rights owner or op-
ator, as appropriate, has been noti-
ed of the violation in writing and did
t correct the violation within the
ne allowed; and
(ii) The operating rights owner or
erator, as appropriate, has been as-
sed $250 under § 3163.1 of this title
d a second notice has been issued
ving an abatement period of not less
an 20 days; and
iii) The noncompliance was not
ated within the time allowed by the
cond notice. The initial proposed
nalty for a minor violation under
ragraph (a) of this section shall be
the rate of $50 per day beginning
th the date of the second notice.
der paragraph (b) of this section,
e penalty shall be at a daily rate of
00. Such penalties shall not exceed a
e of $100 per day, per operating
hts owner or operator, per lease
der paragraph (a) of this section, of
000 per day, per operating rights
ner or operator, per lease under
ragraph (b) of this section.
h) On a case-by-case basis, the Sec-
ary may compromise or reduce civil
alties under this section. In com-
mising or reducing the amount of a
il penalty, the Secretary shall state
the record the reasons for such de-
mination.
i) Civil penalties provided by this
tion shall be supplemental to, and
in derogation of, any other penal-
s or assessments for noncompliance
any other provision of law, except
provided in paragraphs (a) and (b)
this section.
j) If the violation continues beyond
60-day maximum specified in para-
ph (b) of this section or beyond the
day maximum specified in para-
phs (e) and (f) of this section, lease
cellation proceedings shall be initi-
d under either Title 43 or Title 25
he Code of Federal Regulations.
) If the violation continues beyond
20-day maximum specified in para-
ph (d) of this section, the author-
officer shall revoke the transport-
authority to remove crude oil or
other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocation to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

[52 FR 5393, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17364, May 16, 1988]

§ 3163.3 Criminal penalties.

Any person who commits an act for which a civil penalty is provided in § 3163.4-1(b)(6) of this title shall, upon conviction, be punished by a fine of not more than $50,000 or by imprisonment for not more than 2 years or both.

[49 FR 37367, Sept. 21, 1984. Redesignated at 52 FR 5394, Feb 20, 1987]

§ 3163.4 Failure to pay.

If any person fails to pay an assessment or a civil penalty under § 3163.1 or § 3163.2 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by § 3165.4(e) of this title. The Federal Oil and Gas Royalty Management Act requires that any judgment by the court shall include an order to pay.

[52 FR 5394, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987]

§ 3163.5 Assessments and civil penalties.

(a) Assessments made under § 3163.1 of this title are due upon issuance and shall be paid within 30 days of receipt of certified mail written notice or personal service, as directed by the authorized officer in the notice. Failure to pay assessed damages timely will be subject to late payment charges as prescribed under Title 30 CFR Group 202.

(b) Civil penalties under § 3163.2 of this title shall be paid within 30 days of completion of any final order of the Secretary or the final order of the Court.

(c) Payments made pursuant to this section shall not relieve the responsible party of compliance with the regulations in this part or from liability for waste or any other damage. A waiver of any particular assessment shall not be construed as precluding an assessment pursuant to § 3163.1 of this title for any other act of noncompliance occurring at the same time or at any other time. The amount of any civil penalty under § 3163.2 of this title, as finally determined, may be deducted from any sums owing by the United States to the person charged.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983; 49 FR 37368, Sept. 21, 1984; 52 FR 5394, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987; 53 FR 17364, May 16, 1988]

§ 3163.6 Injunction and specific performance.

(a) In addition to any other remedy under this part or any mineral leasing law, the Attorney General of the United States or his designee may bring a civil action in a district court of the United States to:

(1) Restrain any violation of the Federal Oil and Gas Royalty and Management Act or any mineral leasing law of the United States; or

(2) Compel the taking of any action required by or under the Act or any mineral leasing law of the United States.

(b) A civil action described in paragraph (a) may be brought only in the United States district court of the judicial district wherein the act, omission or transaction constituting a violation under the Act or any other mineral leasing law occurred, or wherein the defendant is found or transacts business.

[49 FR 37368, Sept. 21, 1984]

Subpart 3164—Special Provisions

§ 3164.1 Onshore Oil and Gas Orders.

(a) The Director is authorized to issue Onshore Oil and Gas Orders when necessary to implement and supplement the regulations in this part. All orders will be published in the Federal Register both for public comment and in final form.

(b) These Orders are binding on operating rights owners and operators, as appropriate, of Federal and restricted Indian oil and gas leases which have been, or may hereafter be, issued. The Onshore Oil and Gas Orders listed below are currently in effect:

Order No	Subject	Effective date	Federal Register reference	Supersedes
1	Approval of operations.	Nov. 21, 1983	48 FR 48916, and 48 FR 56226.	NTL-6
2	Drilling operations.	Dec. 19, 1988	53 FR 46798	None
3	Site security.	Mar. 27, 1989	54 FR 8060	NTL-7
4	Measurement of oil.	Aug. 23, 1989	54 FR 8086	None
5	Measurement of Gas.	March 27, 1989 for new facilities; August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas; February 26, 1990 for existing facilities producing less than 200 MCF per day of gas.	54 FR 8100	None

NOTE: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

[47 FR 47765, Oct. 27, 1982. Redesignated at 48 FR 36583-36586, Aug. 12, 1983, and amended at 48 FR 48921, Oct. 21, 1983; 48 FR 56226, Dec. 20, 1983; 53 FR 17364, May 16, 1988; 54 FR 8060, Feb. 24, 1989; 54 FR 8092, Feb. 24, 1989; 54 FR 8106, Feb. 24, 1989; 54 FR 39527, 39529, Sept. 27, 1989]

§ 3164.2 NTL's and other implementing procedures.

(a) The authorized officer is authorized to issue NTL's when necessary to implement the onshore oil and gas orders and the regulations in this part. All NTL's will be issued after notice and opportunity for comment.

(b) All NTL's issued prior to the promulgation of these regulations shall remain in effect until modified, superseded by an Onshore Oil and Gas Order, or otherwise terminated.

(c) A manual and other written instructions will be used to provide policy and procedures for internal guidance of the Bureau of Land Management.

§ 3164.3 Surface rights.

(a) Operators shall have the right of surface use only to the extent specifically granted by the lease. With respect to restricted Indian lands, additional surface rights may be exercised when granted by a written agreement with the Indian surface owner and approved by the Superintendent of the Indian agency having jurisdiction.

(b) Except for the National Forest System lands, the authorized officer is responsible for approving and supervising the surface use of all drilling, development, and production activities on the leasehold. This includes storage tanks and processing facilities, sales facilities, all pipelines upstream from such facilities, and other facilities to aid production such as water disposal pits and lines, and gas or water injection lines.

(c) On National Forest System lands, the Forest Service shall regulate all surface disturbing activities in accordance with Forest Service regulations, including providing to the authorized officer appropriate approvals of such activities.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17364, May 16, 1988; 53 FR 22847, June 17, 1988]

§ 3164.4 Damages on restricted Indian lands.

Assessments for damages to lands, crops, buildings, and to other improvements on restricted Indian lands shall be made by the Superintendent and be payable in the manner prescribed by said official.

Subpart 3165—Relief, Conflicts, and Appeals

§ 3165.1 Relief from operating and producing requirements.

(a) Applications for relief from either the operating or the producing requirements of a lease, or both, shall be filed with the authorized officer, and shall include a full statement of the circumstances that render such relief necessary.

(b) The authorized officer shall act on applications submitted for a suspension of operations or production, or both, filed pursuant to § 3103.4-2 of this title. The application for suspension shall be filed with the authorized officer prior to the expiration date of the lease; shall be executed by all operating rights owners or, in the case of a Federal unit approved under part 3180 of this title, by the unit operator on behalf of the committed tracts or by all operating rights owners of such tracts; and shall include a full statement of the circumstances that makes such relief necessary.

(c) If approved, a suspension of operations and production will be effective on the first of the month in which the completed application was filed or the date specified by the authorized officer. Suspensions will terminate when they are no longer justified in the interest of conservation, when such action is in the interest of the lessor, or as otherwise stated by the authorized officer in the approval letter.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17364, May 16, 1988]

§ 3165.1-1 Relief from royalty and rental requirements.

Applications for any modification authorized by law of the royalty or rental requirements of a lease for lands of the United States shall be filed in the office of the authorized officer having jurisdiction of the lands. (For other regulations relating to royalty and rental relief, and suspension of operations and production, see part 3103 of this title.)

[48 FR 36586, Aug. 12, 1983, as amended at 53 FR 17365, May 16, 1988]

§ 3165.2 Conflicts between regulations.

In the event of any conflict between the regulations in this part and the regulations in title 25 CFR concerning oil and gas operations on Federal and Indian leaseholds, the regulations in this part shall govern with respect to the obligations in the conduct of oil and gas operations, acts of noncompliance, and the jurisdiction and authority of the authorized officer.

[47 FR 47765, Oct. 27, 1982. Redesignated and amended at 48 FR 36583-36586, Aug. 12, 1983, further amended at 53 FR 17365, May 16, 1988]

§ 3165.3 Notice, State Director review and hearing on the record.

(a) *Notice.* Whenever an operating rights owner or operator, as appropriate, fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the appropriate party to remedy any defaults or violations. Written orders or a notice of violation, assessment, or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 7 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice of violation, assessment, or proposed penalty on his/her behalf. In the case of a major violation, the authorized officer shall make a good faith effort to contact such designated representative by telephone to be followed by a written notice. Receipt of notice shall be deemed to occur at the time of such verbal communication, and the time of notice and the name of the receiving party shall be confirmed in the file. If the good faith effort to contact the designated representative is unsuccessful, notice of the major violation may be given to any person conducting or supervising operations subject to the regulations in this part. In the case of a minor violation, written notice shall be provided as described above. A copy of all orders, notices, or instructions served on any contractor or field employee or designated representative shall also be mailed to the operator. Any notice involving a civil penalty shall be mailed to the operating rights owner.

(b) *State Director review.* Any adversely affected party that contests a notice of violation or assessment or an instruction, order, or decision of the authorized officer issued under the regulations in this part, may request an administrative review, before the State Director, either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the appropriate State Director within 20 business days of the date such notice of violation or assessment or instruction, order, or decision was received or considered to have been received and shall be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. Such review shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in § 3165.4 of this part.

(c) *Review of proposed penalties.* Any adversely affected party wishing to contest a notice of proposed penalty shall request an administrative review before the State Director under the procedures set out in paragraph (b) of this section. However, no civil penalty shall be assessed under this part until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Therefore, any party adversely affected by the State Director's decision on the proposed penalty, may request a hearing on the record before an Administrative Law Judge or, in lieu of a hearing, may appeal that decision directly to the Interior Board of Land Appeals as provided in § 3165.4(b)(2) of this part. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals as provided in § 3163.4 of this title.

(d) *Action on request for State Director review. Action on request for administrative review.* The State Director shall issue a final decision within 10 business days of the receipt of a complete request for administrative review or, where oral presentation has been made, within 10 business days therefrom. Such decision shall represent the final Bureau decision from which further review may be obtained as provided in paragraph (c) of this section for proposed penalties, and in § 3165.4 of this title for all decisions.

(e) *Effect of request for State Director review or for hearing on the record.* (1) Any request for review by the State Director under this section shall not result in a suspension of the requirement for compliance with the notice of violation or proposed penalty, or stop the daily accumulation of assessments or penalties, unless the State Director to whom the request is made so determines.

(2) Any request for a hearing on the record before an administrative law judge under this section shall not result in a suspension of the requirement for compliance with the decision, unless the administrative law judge so determines. Any request for hearing on the record shall stop the accumulation of additional daily penalties until such time as a final decision is rendered, except that within 10 days of receipt of a request for a hearing on the record, the State Director may, after review of such request, recommend that the Director reinstate the accumulation of daily civil penalties until the violation is abated. Within 45 days of the filing of the request for a hearing on the record, the Director may reinstate the accumulation of civil penalties if he/she determines that the public interest requires a reinstatement of the accumulation and that the violation is causing or threatening immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not reinstate the daily accumulation within 45 days of the filing of the request for a hearing on the record, the suspension shall continue.

[52 FR 5394, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17365, May 16, 1988]

§ 3165.4 Appeals.

(a) *Appeal of decision of State Director.* Any party adversely affected by the decision of the State Director after State Director review, under § 3165.3(b) of this title, of a notice of violation or assessment or of an instruction, order, or decision may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations set out in part 4 of this title.

(b) *Appeal from decision on a proposed penalty after a hearing on the record.* (1) Any party adversely affected by the decision of an Administrative Law Judge on a proposed penalty after a hearing on the record under § 3165.3(c) of this title may appeal that decision to the Interior Board of Land Appeals pursuant to the regulations in part 4 of this title.

(2) In lieu of a hearing on the record under § 3165.3(c) of this title, any party adversely affected by the decision of the State Director on a proposed penalty may waive the opportunity for such a hearing on the record by appealing directly to the Interior Board of Land Appeals under part 4 of this title. However, if the right to a hearing on the record is waived, further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act is precluded.

(c) *Effect of appeal on compliance requirements.* Except as provided in paragraph (d) of this section, any appeal filed pursuant to paragraphs (a) and (b) of this section shall not result in a suspension of the requirement for compliance with the order or decision from which the appeal is taken unless the Interior Board of Land Appeals determines that suspension of the requirements of the order or decision will not be detrimental to the interests of the lessor or upon submission and acceptance of a bond deemed adequate to indemnify the lessor from loss or damage.

(d) *Effect of appeal on assessments and penalties.* (1) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (a) of this section shall suspend the accumulation of additional daily assessments. However, the pendency of an appeal shall not bar the authorized officer from assessing civil penalties under § 3163.2 of this title in the event the operator has failed to abate the violation which resulted in the assessment. The Board of Land Appeals may issue appropriate orders to coordinate the pending appeal and the pending civil penalty proceeding.

(2) Except as provided in paragraph (d)(3) of this section, an appeal filed pursuant to paragraph (b) of this section shall suspend the accumulation of additional daily civil penalties.

(3) When an appeal is filed under paragraph (a) or (b) of this section, the State Director may, within 10 days of receipt of the notice of appeal, recommend that the Director reinstate the accumulation of assessments and daily civil penalties until such time as a final decision is rendered or until the violation is abated. The Director may, if he/she determines that the public interest requires it, reinstate such accumulation(s) upon a finding that the violation is causing or threatening immediate substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income. If the Director does not act on the recommendation to reinstate the accumulation(s) within 45 days of the filing of the notice of appeal, the suspension shall continue.

(e) *Judicial review.* Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of civil penalty determinations only where a person has requested a hearing on the record, a waiver of such hearing precludes further review by the district court. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of final decision as provided in § 4.21 of this title.

[52 FR 5395, Feb. 20, 1987; 52 FR 10225, Mar. 31, 1987, as amended at 53 FR 17365, May 16, 1988]

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS

NOTE: Many existing unit agreements currently in effect specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager in the body of the agreements, as well as references to 30 CFR part 221 or specific sections thereof. Those references shall now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or Minerals Management Service, as appropriate.

Subpart 3180—Onshore Oil and Gas Unit Agreements: General

Sec.

3180.0-1 Purpose.
3180.0-2 Policy.
3180.0-3 Authority.
3180.0-5 Definitions.

Subpart 3181—Application for Unit Agreement

3181.1 Preliminary consideration of unit agreement.
3181.2 Designation of unit area; depth of test well.
3181.3 Parties to unit agreement.
3181.4 Inclusion of non-Federal lands.

Subpart 3182—Qualifications of Unit Operator

3182.1 Qualifications of unit operator.

Subpart 3183—Filing and Approval of Documents

3183.1 Where to file papers.
3183.2 Designation of area.
3183.3 Executed agreements.
3183.4 Approval of executed agreement.
3183.5 Participating area.
3183.6 Plan of development.
3183.7 Return of approved documents.

Subpart 3184—[Reserved]

Subpart 3185—Appeals

3185.1 Appeals.

Subpart 3186—Model Forms

3186.1 Model onshore unit agreement for unproven areas.
3186.1-1 Model Exhibit "A."
3186.1-2 Model Exhibit "B."
3186.2 Model collective bond.
3186.3 Model for designation of successor unit operator by working interest owners.
3186.4 Model for change in unit operator by assignment.

AUTHORITY: Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181, 189, 226(e), 226(m)).

SOURCE: 48 FR 26766, June 10, 1983, unless otherwise noted. Redesignated at 48 FR 36587, Aug. 12, 1983.

EDITORIAL NOTES:

NOTE 1: See Redesignation Table No. 2 appearing in the Finding Aids section of this volume.

NOTE 2: Nomenclature changes to this part appear at 48 FR 36587-36588, Aug. 12, 1983.

Subpart 3180—Onshore Oil and Gas Unit Agreements: General

§ 3180.0-1 Purpose.

The regulations in this part prescribe the procedures to be followed and the requirements to be met by the owners of any right, title or interest in Federal oil and gas leases (see § 3180.0-5 of this title) and their representatives who wish to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan for the development of any oil or gas pool, field or like area, or any part thereof. All unit agreements on Federal leases are subject to the regulations contained in part 3160 of this title, Onshore Oil and Gas Operations. All unit operations on non-Federal lands included within Federal unit plans are subject to the reporting requirements of part 3160 of this title.

[48 FR 36587, Aug. 12, 1983]

§ 3180.0-2 Policy.

Subject to the supervisory authority of the Secretary of the Interior, the administration of the regulations in this part shall be under the jurisdiction of the authorized officer. In the exercise of his/her discretion, the authorized officer shall be subject to the direction and supervisory authority of the Director, Bureau of Land Management, who may exercise the jurisdiction of the authorized officer.

[48 FR 36587, Aug. 12, 1983]

§ 3180.0-3 Authority.

The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181, 189, 226(e) and 226(j)), and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983), under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the responsibility for leasing of restricted Indian lands, to the Bureau of Land Management.

[48 FR 36587, Aug. 12, 1983]

§ 3180.0-5 Definitions.

The following terms, as used in this part or in any unit agreement approved under the regulations in this part, shall have the meanings here indicated unless otherwise defined in such unit agreement:

Federal lease. A lease issued under the Act of February 25, 1920, as amended (30 U.S.C. 181, *et seq.*); the Act of May 21, 1930 (30 U.S.C. 351-359); the Act of August 7, 1947 (30 U.S.C. 351, *et seq.*); or the Act of November 16, 1981 (Pub. L. 97-98, 95 Stat. 1070).

Participating area. That part of a unit area which is considered reasonably proven to be productive of unitized substances in paying quantities or which is necessary for unit operations and to which production is allocated in the manner prescribed in the unit agreement.

Unit area. The area described in an agreement as constituting the land logically subject to exploration and/or development under such agreement.

Unitized land. Those lands and formations within a unit area which are committed to an approved agreement or plan.

Unitized substances. Deposits of oil and gas contained in the unitized land which are recoverable in paying quantities by operation under and pursuant to an agreement.

Working interest. An interest held in unitized substances or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in the agreement, the owner of such interest is vested with the right to explore for, develop, and produce such substances. The rights delegated to the unit operator by the unit agreement are not regarded as a working interest.

[48 FR 26766, June 10, 1983. Redesignated and amended at 48 FR 36587, Aug. 12, 1983; 51 FR 34603, Sept. 30, 1986]

Subpart 3181—Application for Unit Agreement

§ 3181.1 Preliminary consideration of unit agreement.

The model unit agreement set forth in § 3186.1 of this title, is acceptable for use in unproven areas. Unique situations requiring special provisions should be clearly identified, since these and other special conditions may necessitate a modification of the model unit agreement set forth in § 3186.1 of this title. Any proposed special provisions or other modifications of the model agreement should be submitted for preliminary consideration so that any necessary revision may be prescribed prior to execution by the interested parties. Where Federal lands constitute less than 10 percent of the total unit area, a non-Federal unit agreement may be used. Upon submission of such an agreement, the authorized officer will take appropriate action to commit the Federal lands.

§ 3181.2 Designation of unit area; depth of test well.

An application for designation of an area as logically subject to development under a unit agreement and for determination of the depth of a test well may be filed by a proponent of such an agreement at the proper BLM office. Such application shall be accompanied by a map or diagram on a scale of not less than 2 inches to 1 mile, outlining the area sought to be designated under this section. The Federal, State, Indian and privately owned land should be indicated by distinctive symbols or colors. Federal and Indian oil and gas leases and lease applications should be identified by lease serial numbers. Geologic information, including the results of any geophysical surveys, and any other available information showing that unitization is necessary and advisable in the public interest should be furnished. If requested, geologic, geophysical and other related information so furnished will be treated as confidential in accordance with the provisions of § 3162.8 of this title. These data will be considered by the authorized officer and the applicant will be informed of the decision reached. The designation of an area, pursuant to an application filed under this section, shall not create an exclusive right to submit an agreement for such area, nor preclude the inclusion of such area or any party thereof in another unit area.

§ 3181.3 Parties to unit agreement.

The owners of any right, title, or interest in the oil and gas deposits to be unitized are regarded as proper parties to a proposed agreement. All such parties must be invited to join the agreement. If any party fails or refuses to join the agreement, the proponent of the agreement, at the time it is filed for approval, must submit evidence of reasonable effort made to obtain joinder of such party and, when requested, the reasons for such nonjoinders. The address of each signatory party to the agreement should be inserted below the signature. Each signature should be attested by at least one witness if not notarized. The signing parties may execute any number of counterparts of the agreement with the same force and effect as if all parties signed the same document, or may execute a ratification or consent in a separate instrument with like force and effect.

§ 3181.4 Inclusion of non-Federal lands.

(a) Where State-owned land is to be unitized with Federal lands, approval of the agreement by appropriate State officials must be obtained prior to its submission to the proper BLM office for final approval. When authorized by the laws of the State in which the unitized land is situated, appropriate provision may be made in the agreement, recognizing such laws to the extent that they are applicable to non-Federal unitized land.

(b) When Indian lands are included, modification of the unit agreement will be required where appropriate. Approval of an agreement containing Indian lands by the Bureau of Indian Affairs must be obtained prior to final approval by the authorized officer.

Subpart 3182—Qualifications of Unit Operator

§ 3182.1 Qualifications of unit operator.

A unit operator must qualify as to citizenship in the same manner as those holding interests in Federal oil and gas leases under the regulations at subpart 3102 of this title. The unit operator may be an owner of a working interest in the unit area or such other party as may be selected by the owners of working interests. The unit operator shall execute an acceptance of the duties and obligations imposed by the agreement. No designation of or change in a unit operator will become effective until approved by the authorized officer, and no such approval will be granted unless the successor unit operator is deemed qualified to fulfill the duties and obligations prescribed in the agreement.

Subpart 3183—Filing and Approval of Documents

§ 3183.1 Where to file papers.

All papers, instruments, documents, and proposals submitted under this part shall be filed in the proper BLM office.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and amended at 51 FR 34603, Sept. 30, 1986]

§ 3183.2 Designation of area.

An application for designation of a proposed unit area and determination of the required depth of test well(s) shall be filed in duplicate. A like number of counterparts should be filed of any geologic data and any other information submitted in support of such application.

§ 3183.3 Executed agreements.

Where a duly executed agreement is submitted for final approval, a minimum of four signed counterparts should be filed. The number of counterparts to be filed for supplementing, modifying, or amending an existing agreement, including change of unit operator, designation of new unit operator, establishment or revision of a participating area, and termination shall be prescribed by the authorized officer.

§ 3183.4 Approval of executed agreement.

(a) A unit agreement shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the agreement (§ 3186.1 of this title for example). No such agreement shall be approved unless the parties signatory to the agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

(b) The public interest requirement of an approved unit agreement for unproven areas shall be satisfied only if the unit operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said agreement. If an application is received for voluntary termination of a unit agreement for an unproven area during its fixed term or such an agreement automatically expires at the end of its fixed term without the public interest requirement having been satisfied, the approval of that agreement by the authorized officer and lease segregations and extensions under § 3107.3-2 of this title shall be invalid, and no Federal lease shall be eligible for extensions under § 3107.4 of this title.

(c) Any modification of an approved agreement shall require the prior approval of the authorized officer.

[53 FR 17365, May 16, 1988]

§ 3183.5 Participating area.

Two counterparts of a substantiating geologic report, including structure-contour map, cross sections, and pertinent data, shall accompany each application for approval of a participating area or revision thereof under an approved agreement.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and further redesignated at 53 FR 17365, May 16, 1988]

§ 3183.6 Plan of development.

Three counterparts of all plans of development and operation shall be submitted for approval under an approved agreement.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and further redesignated at 53 FR 17365, May 16, 1988]

§ 3183.7 Return of approved documents.

One approved counterpart of each instrument or document submitted for approval will be returned to the unit operator by the authorized officer or his representative, together with such additional counterparts as may have been furnished for that purpose.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and amended at 51 FR 34603, Sept. 30, 1986. Further redesignated at 53 FR 17365, May 16, 1988]

Subpart 3184—[Reserved]

Subpart 3185—Appeals

§ 3185.1 Appeals.

A technical and procedural review may be requested pursuant to § 3165.3 of this title and/or an appeal may be taken as provided in part 4 of this title from any order or decision issued under the regulations in this part.

Subpart 3186—Model Forms

§ 3186.1 Model onshore unit agreement for unproven areas.

Introductory Section

1 ENABLING ACT AND REGULATIONS.
2 UNIT AREA.
3 UNITIZED LAND AND UNITIZED SUBSTANCES.
4 UNIT OPERATOR.
5 RESIGNATION OR REMOVAL OF UNIT OPERATOR.
6 SUCCESSOR UNIT OPERATOR.
7 ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT.
8 RIGHTS AND OBLIGATIONS OF UNIT OPERATOR.
9 DRILLING TO DISCOVERY.
10 PLAN OF FURTHER DEVELOPMENT AND OPERATION.
11 PARTICIPATION AFTER DISCOVERY.
12 ALLOCATION OF PRODUCTION.
13 DEVELOPMENT OR OPERATION OF NONPARTICIPATING LAND OR FORMATIONS.
14 ROYALTY SETTLEMENT.
15 RENTAL SETTLEMENT.
16 CONSERVATION.
17 DRAINAGE.
18 LEASES AND CONTRACTS CONFORMED AND EXTENDED.
19 CONVENANTS RUN WITH LAND.
20 EFFECTIVE DATE AND TERM.
21 RATE OF PROSPECTING, DEVELOPMENT, AND PRODUCTION.
22 APPEARANCES.
23 NOTICES.
24 NO WAIVER OF CERTAIN RIGHTS.
25 UNAVOIDABLE DELAY.
26 NONDISCRIMINATION.
27 LOSS OF TITLE.
28 NONJOINDER AND SUBSEQUENT JOINDER.
29 COUNTERPARTS.
30 SURRENDER.[1]
31 TAXES.[1]
32 NO PARTNERSHIP.[1]
Concluding Section IN WITNESS WHEREOF.
General Guidelines.
Certification—Determination.

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[1] Optional sections (in addition the penultimate paragraph of Section 9 is to be included only when more than one obligation well is required and paragraph (h) of section 18 is to be used only when applicable).

UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE

Unit area ——————————
County of ——————————
State of ——————————
No. ——————————

This agreement, entered into as of the ——— day of ———, 19— by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the "parties hereto,"

WITNESSETH:

WHEREAS, the parties hereto are the owners of working, royalty, or other oil and gas interests in the unit area subject to this agreement; and

WHEREAS, the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sec. 181 *et seq.*, authorizes Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit plan of development or operations of any oil and gas pool, field, or like area, or any part thereof for the purpose of more properly conserving the natural resources thereof whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

WHEREAS, the parties hereto hold sufficient interests in the ——— Unit Area covering the land hereinafter described to give reasonably effective control of operations therein; and

WHEREAS, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operation of the area subject to this agreement under the terms, conditions, and limitations herein set forth;

NOW, THEREFORE, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined unit area, and agree severally among themselves as follows:

1. ENABLING ACT AND REGULATIONS. The Mineral Leasing Act of February 25, 1920, as amended, supra, and all valid pertinent regulations including operating and unit plan regulations, heretofore issued thereunder or valid, pertinent, and reasonable regulations hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands, provided such regulations are not inconsistent with the terms of this agreement; and as to non-Federal lands, the oil and gas operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the terms hereof or the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

2. UNIT AREA. The area specified on the map attached hereto marked Exhibit A is hereby designated and recognized as constituting the unit area, containing ——— acres, more or less.

Exhibit A shows, in addition to the boundary of the unit area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator. Exhibit B attached hereto is a schedule showing to the extent known to the Unit Operator, the acreage, percentage, and kind of ownership of oil and gas interests in all lands in the unit area. However, nothing herein or in Exhibits A or B shall be construed as a representation by any party hereto as to the ownership of any interest other than such interest or interests as are shown in the Exhibits as owned by such party. Exhibits A and B shall be revised by the Unit Operator whenever changes in the unit area or in the ownership interests in the individual tracts render such revision necessary, or when requested by the Authorized Officer, hereinafter referred to as AO and not less than four copies of the revised Exhibits shall be filed with the proper BLM office.

The above-described unit area shall when practicable be expanded to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction is deemed to be necessary or advisable to conform with the purposes of this agreement. Such expansion or contraction shall be effected in the following manner:

(a) Unit Operator on its own motion (after preliminary concurrence by the AO), or on demand of the AO, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the unit area, the reasons therefor, any plans for additional drilling, and the proposed effective date of the expansion or contraction, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the proper BLM office, and copies thereof mailed to the last known address of each working interest owner, lessee and lessor whose interests are affected, advising that 30 days will be allowed for submission to the Unit Operator of any objections.

(c) Upon expiration of the 30-day period provided in the preceding item (b) hereof, Unit Operator shall file with the AO evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto which have been filed with Unit Operator, together with an application in triplicate, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the AO, become effective as of the date prescribed in the notice thereof or such other appropriate date.

(e) All legal subdivisions of lands (i.e., 40 acres by Government survey or its nearest lot or tract equivalent; in instances of irregular surveys, unusually large lots or tracts shall be considered in multiples of 40 acres or the nearest aliquot equivalent thereof), no parts of which are in or entitled to be in a participating area on or before the fifth anniversary of the effective date of the first initial participating area established under this unit agreement, shall be eliminated automatically from this agreement, effective as of said fifth anniversary, and such lands shall no longer be a part of the unit area and shall no longer be subject to this agreement, unless diligent drilling operations are in progress on unitized lands not entitled to participation on said fifth anniversary, in which event all such lands shall remain subject hereto for so long as such drilling operations are continued diligently, with not more than 90-days time elapsing between the completion of one such well and the commencement of the next such well. All legal subdivisions of lands not entitled to be in a participating area within 10 years after the effective date of the first initial participating area approved under this agreement shall be automatically eliminated from this agreement as of said tenth anniversary. The Unit Operator shall, within 90 days after the effective date of any elimination hereunder, describe the area so eliminated to the satisfaction of the AO and promptly notify all parties in interest. All lands reasonably proved productive of unitized substances in paying quantities by diligent drilling operations after the aforesaid 5-year period shall become participating in the same manner as during said first 5-year period. However, when such diligent drilling operations cease, all nonparticipating lands not then entitled to be in a participating area shall be automatically eliminated effective as the 91st day thereafter.

Any expansion of the unit area pursuant to this section which embraces lands theretofore eliminated pursuant to this subsection 2(e) shall not be considered automatic commitment or recommitment of such lands. If conditions warrant extension of the 10-year period specified in this subsection, a single extension of not to exceed 2 years may be accomplished by consent of the owners of 90 percent of the working interest in the current nonparticipating unitized lands and the owners of 60 percent of the basic royalty interests (exclusive of the basic royalty interests of the United States) in nonparticipating unitized lands with approval of the AO, provided such extension application is submitted not later than 60 days prior to the expiration of said 10-year period.

3. UNITIZED LAND AND UNITIZED SUBSTANCES. All land now or hereafter committed to this agreement shall constitute land referred to herein as "unitized land" or "land subject to this agreement." All oil and gas in any and all formations of the unitized land are unitized under the terms of this agreement and herein are called "unitized substances."

4. UNIT OPERATOR. ——— is hereby designated as Unit Operator and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, and production of unitized substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in unitized substances, and the term "working interest owner" when used herein shall include or refer to Unit Operator as the owner of a working interest only when such an interest is owned by it.

5. RESIGNATION OR REMOVAL OF UNIT OPERATOR. Unit Operator shall have the right to resign at any time prior to the establishment of a participating area or areas hereunder, but such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator and terminate Unit Operator's rights as such for a period of 6 months after notice of intention to resign has been served by Unit Operator on all working interest owners and the AO and until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment, whichever is required by the AO, unless a new Unit Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

Unit Operator shall have the right to resign in like manner and subject to like limitations as above provided at any time after a participating area established hereunder is in existence, but in all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the working interest owners shall be jointly responsible for performance of the duties of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

The resignation of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation.

The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of working interests as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the AO.

The resignation or removal of Unit Operator under this agreement shall not terminate its right, title, or interest as the owner of working interest or other interest in unitized substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, materials, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or to the common agent, if no such new Unit Operator is selected to be used for the purpose of conducting unit operations hereunder. Nothing herein shall be construed as authorizing removal of any material, equipment, or appurtenances needed for the preservation of any wells.

6. SUCCESSOR UNIT OPERATOR. Whenever the Unit Operator shall tender his or its resignation as Unit Operator or shall be removed as hereinabove provided, or a change of Unit Operator is negotiated by the working interest owners, the owners of the working interests according to their respective acreage interests in all unitized land shall, pursuant to the Approval of the Parties requirements of the unit operating agreement, select a successor Unit Operator. Such selection shall not become effective until:

(a) a Unit Operator so selected shall accept in writing the duties and responsibilities of Unit Operator, and

(b) the selection shall have been approved by the AO.

If no successor Unit Operator is selected and qualified as herein provided, the AO at his election may declare this unit agreement terminated.

7. ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT. If the Unit Operator is not the sole owner of working interests, costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of working interests, all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of working interests, whether one or more, separately or collectively. Any agreement or agreements entered into between the working interest owners and the Unit Operator as provided in this section, whether one or more, are herein referred to as the "unit operating agreement." Such unit operating agreement shall also provide the manner in which the working interest owners shall be entitled to receive their respective proportionate and allocated share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other independent contracts, and such other rights and obligations as between Unit Operator and the working interest owners as may be agreed upon by Unit Operator and the working interest owners; however, no such unit operating agreement shall be deemed either to modify any of the terms and conditions of this unit agreement or to relieve the Unit Operator of any right or obligation established under this unit agreement, and in case of any inconsistency or conflict between this agreement and the unit operating agreement, this agreement shall govern. Two copies of any unit operating agreement executed pursuant to this section shall be filed in the proper BLM office prior to approval of this unit agreement.

8. RIGHTS AND OBLIGATIONS OF UNIT OPERATOR. Except as otherwise specifically provided herein, the exclusive right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting for, producing, storing, allocating, and distributing the unitized substances are hereby delegated to and shall be exercised by the Unit Operator as herein provided. Acceptable evidence of title to said rights shall be deposited with Unit Operator and, together with this agreement, shall constitute and define the rights, privileges, and obligations of Unit Operator. Nothing herein, however, shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that under this agreement the Unit Operator, in its capacity as Unit Operator, shall exercise the rights of possession and use vested in the parties hereto only for the purposes herein specified.

9. DRILLING TO DISCOVERY. Within 6 months after the effective date hereof, the Unit Operator shall commence to drill an adequate test well at a location approved by the AO, unless on such effective date a well is being drilled in conformity with the terms hereof, and thereafter continue such drilling diligently until the ——— formation has been tested or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (to wit: quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the AO that further drilling of said well would be unwarranted or impracticable, provided, however, that Unit Operator shall not in any event be required to drill said well to a depth in excess of —— feet. Until the discovery of unitized substances capable of being produced in paying quantities, the Unit Operator shall continue

drilling one well at a time, allowing not more than 6 months between the completion of one well and the commencement of drilling operations for the next well, until a well capable of producing unitized substances in paying quantities is completed to the satisfaction of the AO or until it is reasonably proved that the unitized land is incapable of producing unitized substances in paying quantities in the formations drilled hereunder. Nothing in this section shall be deemed to limit the right of the Unit Operator to resign as provided in Section 5, hereof, or as requiring Unit Operator to commence or continue any drilling during the period pending such resignation becoming effective in order to comply with the requirements of this section.

The AO may modify any of the drilling requirements of this section by granting reasonable extensions of time when, in his opinion, such action is warranted.

[2] 9a. Multiple well requirements. Notwithstanding anything in this unit agreement to the contrary, except Section 25, UNAVOIDABLE DELAY, —— wells shall be drilled with not more than 6-months time elapsing between the completion of the first well and commencement of drilling operations for the second well and with not more than 6-months time elapsing between completion of the second well and the commencement of drilling operations for the third well, . . . regardless of whether a discovery has been made in any well drilled under this provision. Both the initial well and the second well must be drilled in compliance with the above specified formation or depth requirements in order to meet the dictates of this section; and the second well must be located a minimum of —— miles from the initial well in order to be accepted by the AO as the second unit test well, within the meaning of this section. The third test well shall be diligently drilled, at a location approved by the AO, to test the —— formation or to a depth of —— feet, whichever is the lesser, and must be located a minimum of —— miles from both the initial and the second test wells. Nevertheless, in the event of the discovery of unitized substances in paying quantities by any well, this unit agreement shall not terminate for failure to complete the —— well program, but the unit area shall be contracted automatically, effective the first day of the month following the default, to eliminate by subdivisions (as defined in Section 2(e) hereof) all lands not then entitled to be in a participating area. [2]

Until the establishment of a participating area, the failure to commence a well subsequent to the drilling of the initial obligation well, or in the case of multiple well requirements, if specified, subsequent to the drilling of those multiple wells, as provided for in this (these) section(s), within the time allowed including any extension of time granted by the AO, shall cause this agreement to terminate automatically. Upon failure to continue drilling diligently any well other than the obligation well(s) commenced hereunder, the AO may, after 15 days notice to the Unit Operator, declare this unit agreement terminated. Failure to commence drilling the initial obligation well, or the first of multiple obligation wells, on time and to drill it diligently shall result in the unit agreement approval being declared invalid *ab initio* by the AO. In the case of multiple well requirements, failure to commence drilling the required multiple wells beyond the first well, and to drill them diligently, may result in the unit agreement approval being declared invalid *ab initio* by the AO;

10. PLAN OF FURTHER DEVELOPMENT AND OPERATION. Within 6 months after completion of a well capable of producing unitized substances in paying quantities, the Unit Operator shall submit for the approval of the AO an acceptable plan of development and operation for the unitized land which, when approved by the authorized officier, shall constitute the further drilling and development obligations of the Unit Operator under this agreement for the period specified therein. Thereafter, from time to time before the expiration of any existing plan, the Unit Operator shall submit for the approval of the AO a plan for an additional specified period for the development and operation of the unitized land. Subsequent plans should normally be filed on a calender year basis not later than March 1 each year. Any proposed modification or addition to the existing plan should be filed as a supplement to the plan.

Any plan submitted pursuant to this section shall provide for the timely exploration of the unitized area, and for the diligent drilling necessary for determination of the area or areas capable of producing unitized substances in paying quantities in each and every productive formation. This plan shall be as complete and adequate as the AO may determine to be necessary for timely development and proper conservation of the oil and gas resources in the unitized area and shall:

(a) Specify the number and locations of any wells to be drilled and the proposed order and time for such drilling; and

(b) Provide a summary of operations and production for the previous year.

Plans shall be modified or supplemented when necessary to meet changed conditions or to protect the interests of all parties to this agreement. Reasonable diligence shall be exercised in complying with the obligations of the approved plan of development and operation. The AO is authorized to grant a reasonable extension of the 6-month period herein prescribed for submission of an initial plan of development and operation where such action is justified because of unusual conditions or circumstances.

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[2] Provisions to be included only when a multiple well obligation is required.

After completion of a well capable of producing unitized substances in paying quantities, no further wells, except such as may be necessary to afford protection against operations not under this agreement and such as may be specifically approved by the AO, shall be drilled except in accordance with an approved plan of development and operation.

11. PARTICIPATION AFTER DISCOVERY. Upon completion of a well capable of producing unitized substances in paying quantities, or as soon thereafter as required by the AO, the Unit Operator shall submit for approval by the AO, a schedule, based on subdivisions of the public-land survey or aliquot parts thereof, of all land then regarded as reasonably proved to be productive of unitized substances in paying quantities. These lands shall constitute a participating area on approval of the AO, effective as of the date of completion of such well or the effective date of this unit agreement, whichever is later. The acreages of both Federal and non-Federal lands shall be based upon appropriate computations from the courses and distances shown on the last approved public-land survey as of the effective date of each initial participating area. The schedule shall also set forth the percentage of unitized substances to be allocated, as provided in Section 12, to each committed tract in the participating area so established, and shall govern the allocation of production commencing with the effective date of the participating area. A different participating area shall be established for each separate pool or deposit of unitized substances or for any group thereof which is produced as a single pool or zone, and any two or more participating areas so established may be combined into one, on approval of the AO. When production from two or more participating areas is subsequently found to be from a common pool or deposit, the participating areas shall be combined into one, effective as of such appropriate date as may be approved or prescribed by the AO. The participating area or areas so established shall be revised from time to time, subject to the approval of the AO, to include additional lands then regarded as reasonably proved to be productive of unitized substances in paying quantities or which are necessary for unit operations, or to exclude lands then regarded as reasonably proved not to be productive of unitized substances in paying quantities, and the schedule of allocation percentages shall be revised accordingly. The effective date of any revision shall be the first of the month in which the knowledge or information is obtained on which such revision is predicated; provided, however, that a more appropriate effective date may be used if justified by Unit Operator and approved by the AO. No land shall be excluded from a participating area on account of depletion of its unitized substances, except that any participating area established under the provisions of this unit agreement shall terminate automatically whenever all completions in the formation on which the participating area is based are abandoned.

It is the intent of this section that a participating area shall represent the area known or reasonably proved to be productive of unitized substances in paying quantities or which are necessary for unit operations; but, regardless of any revision of the participating area, nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of the participating area.

In the absence of agreement at any time between the Unit Operator and the AO as to the proper definition or redefinition of a participating area, or until a participating area has, or areas have, been established, the portion of all payments affected thereby shall, except royalty due the United States, be impounded in a manner mutually acceptable to the owners of committed working interests. Royalties due the United States shall be determined by the AO and the amount thereof shall be deposited, as directed by the AO, until a participating area is finally approved and then adjusted in accordance with a determination of the sum due as Federal royalty on the basis of such approved participating area.

Whenever it is determined, subject to the approval of the AO, that a well drilled under this agreement is not capable of production of unitized substances in paying quantities and inclusion in a participating area of the land on which it is situated is unwarranted, production from such well shall, for the purposes of settlement among all parties other than working interest owners, be allocated to the land on which the well is located, unless such land is already within the participating area established for the pool or deposit from which such production is obtained. Settlement for working interest benefits from such a nonpaying unit well shall be made as provided in the unit operating agreement.

12. ALLOCATION OF PRODUCTION. All unitized substances produced from each participating area established under this agreement, except any part thereof used in conformity with good operating practices within the unitized area for drilling, operating, and other production or development

purposes, for repressuring or recycling in accordance with a plan of development and operations which has been approved by the AO, or unavoidably lost, shall be deemed to be produced equally on an acreage basis from the several tracts of unitized land of the participating area established for such production. For the purpose of determining any benefits accruing under this agreement, each such tract of unitized land shall have allocated to it such percentage of said production as the number of acres of such tract included in said participating area bears to the total acres of unitized land in said participating area, except that allocation of production hereunder for purposes other than for settlement of the royalty, overriding royalty, or payment out of production obligations of the respective working interest owners, shall be on the basis prescribed in the unit operating agreement whether in conformity with the basis of allocation herein set forth or otherwise. It is hereby agreed that production of unitized substances from a participating area shall be allocated as provided herein regardless of whether any wells are drilled on any particular part or tract of the participating area. If any gas produced from one participating area is used for repressuring or recycling purposes in another participating area, the first gas withdrawn from the latter participating area for sale during the life of this agreement, shall be considered to be the gas so transferred, until an amount equal to that transferred shall be so produced for sale and such gas shall be allocated to the participating area from which initially produced as such area was defined at the time that such transferred gas was finally produced and sold.

13. DEVELOPMENT OR OPERATION OF NONPARTICIPATING LAND OR FORMATIONS. Any operator may with the approval of the AO, at such party's sole risk, costs, and expense, drill a well on the unitized land to test any formation provided the well is outside any participating area established for that formation, unless within 90 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill the well in a like manner as other wells are drilled by the Unit Operator under this agreement.

If any well drilled under this section by a non-unit operator results in production of unitized substances in paying quantities such that the land upon which it is situated may properly be included in a participating area, such participating area shall be established or enlarged as provided in this agreement and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this agreement and the unit operating agreement.

If any well drilled under this section by a non-unit operator that obtains production in quantities insufficient to justify the inclusion of the land upon which such well is situated in a participating area, such well may be operated and produced by the party drilling the same, subject to the conservation requirements of this agreement. The royalties in amount or value of production from any such well shall be paid as specified in the underlying lease and agreements affected.

14. ROYALTY SETTLEMENT. The United States and any State and any royalty owner who is entitled to take in kind a share of the substances now unitized hereunder shall be hereafter be entitled to the right to take in kind its share of the unitized substances, and Unit Operator, or the non-unit operator in the case of the operation of a well by a non-unit operator as herein provided for in special cases, shall make deliveries of such royalty share taken in kind in conformity with the applicable contracts, laws, and regulations. Settlement for royalty interest not taken in kind shall be made by an operator responsible therefor under existing contracts, laws and regulations, or by the Unit Operator on or before the last day of each month for unitized substances produced during the preceding calendar month; provided, however, that nothing in this section shall operate to relieve the responsible parties of any land from their respective lease obligations for the payment of any royalties due under their leases.

If gas obtained from lands not subject to this agreement is introduced into any participating area hereunder, for use in repressuring, stimulation of production, or increasing ultimate recovery, in conformity with a plan of development and operation approved by the AO, a like amount of gas, after settlement as herein provided for any gas transferred from any other participating area and with appropriate deduction for loss from any cause, may be withdrawn from the formation into which the gas is introduced, royalty free as to dry gas, but not as to any products which may be extracted therefrom; provided that such withdrawal shall be at such time as may be provided in the approved plan of development and operation or as may otherwise be consented to by the AO as conforming to good petroleum engineering practice; and provided further, that such right of withdrawal shall terminate on the termination of this unit agreement.

Royalty due the United States shall be computed as provided in 30 CFR Group 200 and paid in value or delivered in kind as to all unitized substances on the basis of the amounts thereof allocated to unitized Federal land as provided in Section 12 at the rates specified in the respective Federal leases, or at such other rate or rates as may be authorized by law or regulation and approved by the AO; provided, that for leases on which the royalty rate depends on the daily average production per well, said average production shall be determined in accordance with the operating regulations as though each participating area were a single consolidated lease.

15. RENTAL SETTLEMENT. Rental or minimum royalties due on leases committed hereto shall be paid by the appropriate parties under existing contracts, laws, and regulations, provided that nothing herein contained shall operate to relieve the responsible parties of the land from their respective obligations for the payment of any rental or minimum royalty due under their leases. Rental or minimum royalty for lands of the United States subject to this agreement shall be paid at the rate specified in the respective leases from the United States unless such rental or minimum royalty is waived, suspended, or reduced by law or by approval of the Secretary or his duly authorized representative.

With respect to any lease on non-Federal land containing provisions which would terminate such lease unless drilling operations are commenced upon the land covered thereby within the time therein specified or rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provision of this agreement, be deemed to accure and become payable during the term thereof as extended by this agreement and until the required drilling operations are commenced upon the land covered thereby, or until some portion of such land is included within a participating area.

16. CONSERVATION. Operations hereunder and production of unitized substances shall be conducted to provide for the most economical and efficient recovery of said substances without waste, as defined by or pursuant to State or Federal law or regulation.

17. DRAINAGE. The Unit Operator shall take such measures as the AO deems appropriate and adequate to prevent drainage of unitized substances from unitized land by wells on land not subject to this agreement, which shall include the drilling of protective wells and which may include the payment of a fair and reasonable compensatory royalty, as determined by the AO.

18. LEASES AND CONTRACTS CONFORMED AND EXTENDED. The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof, but otherwise to remain in full force and effect; and the parties hereto hereby consent that the Secretary shall and by his approval hereof, or by the approval hereof by his duly authorized representative, does hereby establish, alter, change, or revoke the drilling, producing, rental, minimum royalty, and royalty requirements of Federal leases committed hereto and the regulations in respect thereto to conform said requirements to the provisions of this agreement, and, without limiting the generality of the foregoing, all leases, subleases, and contracts are particularly modified in accordance with the following:

(a) The development and operation of lands subject to this agreement under the terms hereof shall be deemed full performance of all obligations for development and operation with respect to each and every separately owned tract subject to this agreement, regardless of whether there is any development of any particular tract of this unit area.

(b) Drilling and producing operations performed hereunder upon any tract of unitized lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of unitized land, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the land therein embraced.

(c) Suspension of drilling or producing operations on all unitized lands pursuant to direction or consent of the AO shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of unitized land. A suspension of drilling or producing operations limited to specified lands shall be applicable only to such lands.

(d) Each lease, sublease, or contract relating to the exploration, drilling, development, or operation for oil or gas of lands other than those of the United States committed to this agreement which, by its terms might expire prior to the termination of this agreement, is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of this agreement.

(e) Any Federal lease committed hereto shall continue in force beyond the term so provided therein or by law as to the land committed so long as such lease remains subject hereto, provided that production of unitized substances in paying quantities is established under this unit agreement prior to the expiration date of the term of such lease, or in the event actual drilling operations are commenced on unitized land, in accordance with provisions of this agreement, prior to the end of the primary term of such lease and are being diligently prosecuted at that time, such lease shall be extended for 2 years, and so long thereafter as oil or gas is produced in paying quantities in accordance with the provisions of the Mineral Leasing Act, as amended.

(f) Each sublease or contract relating to the operation and development of unitized substances from lands of the United States committed to this agreement, which by its terms would expire prior to the time at which the underlying lease, as extended by the immediately preceding paragraph, will expire is hereby extended beyond any such term so provided therein so that it shall be continued in full force and effect for and during the term of the underlying lease as such term is herein extended.

(g) The segregation of any Federal lease committed to this agreement is governed by the following provision in the fourth paragraph of sec. 17(m) of the Mineral Leasing Act, as amended by the Act of September 2, 1960 (74 Stat. 781-784) (30 U.S.C. 226(m)):

"Any [Federal] lease heretofore or hereafter committed to any such [unit] plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization: *Provided, however*, That any such lease as to the nonunitized portion shall continue in force and effect for the term thereof but for not less than two years from the date of such segregation and so long thereafter as oil or gas is produced in paying quantities."

If the public interest requirement is not satisfied, the segregation of a lease and/or extension of a lease pursuant to 43 CFR 3107.3-2 and 43 CFR 3107.4, respectively, shall not be effective.

[3] (h) Any lease, other than a Federal lease, having only a portion of its lands committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

19. CONVENANTS RUN WITH LAND. The covenants herein shall be construed to be covenants running with the land with respect to the interests of the parties hereto and their successors in interest until this agreement terminates, and any grant, transfer or conveyance of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest. No assignment or transfer of any working interest, royalty, or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

20. EFFECTIVE DATE AND TERM. This agreement shall become effective upon approval by the AO and shall automatically terminate 5 years from said effective date unless:

(a) Upon application by the Unit Operator such date of expiration is extended by the AO, or

(b) It is reasonably determined prior to the expiration of the fixed term or any extension thereof that the unitized land is incapable of production of unitized substances in paying quantities in the formations tested hereunder, and after notice of intention to terminate this agreement on such ground is given by the Unit Operator to all parties in interest at their last known addresses, this agreement is terminated with the approval of the AO, or

(c) A valuable discovery of unitized substances in paying quantities has been made or accepted on unitized land during said initial term or any extension thereof, in which event this agreement shall remain in effect for such term and so long thereafter as unitized substances can be produced in quantities sufficient to pay for the cost of producing same from wells on unitized land within any participating area established hereunder. Should production cease and diligent drilling or reworking operations to restore production or new production are not in progress within 60 days and production is not restored or should new production not be obtained in paying quantities on committed lands within this unit area, this agreement will automatically terminate effective the last day of the month in which the last unitized production occurred, or

(d) It is voluntarily terminated as provided in this agreement. Except as noted herein, this agreement may be terminated at any time prior to the discovery of unitized substances which can be produced in paying quantities by not less than 75 per centum, on an acreage basis, of the working interest owners signatory hereto, with the approval of the AO. The Unit Operator shall give notice of any such approval to all parties herto. If the public interest requirement is not satisfied, the approval of this unit by the AO shall be invalid.

21. RATE OF PROSPECTING, DEVELOPMENT, AND PRODUCTION. The AO is hereby vested with authority to alter or modify from time to time, in his discretion, the quantity and rate of production under this agreement when such quantity and rate

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[3] Optional paragraph to be used only when applicable.

are not fixed pursuant to Federal or State law, or do not conform to any Statewide voluntary conservation or allocation program which is established, recognized, and generally adhered to by the majority of operators in such State. The above authority is hereby limited to alteration or modifications which are in the public interest. The public interest to be served and the purpose thereof, must be stated in the order of alteration or modification. Without regard to the foregoing, the AO is also hereby vested with authority to alter or modify from time to time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this agreement when such alteration or modification is in the interest of attaining the conservation objectives stated in this agreement and is not in violation of any applicable Federal or State law.

Powers is the section vested in the AO shall only be exercised after notice to Unit Operator and opportunity for hearing to be held not less than 15 days from notice.

22. APPEARANCES. The Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior and to appeal from orders issued under the regulations of said Department, or to apply for relief from any of said regulations, or in any proceedings relative to operations before the Department, or any other legally constituted authority; provided, however, that any other interested party shall also have the right at its own expense to be heard in any such proceeding.

23. NOTICES. All notices, demands, or statements required hereunder to be given or rendered to the parties hereto shall be in writing and shall be personally delivered to the party or parties, or sent by postpaid registered or certified mail, to the last-known address of the party or parties.

24. NO WAIVER OF CERTAIN RIGHTS. Nothing contained in this agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense as to the validity or invalidity of any law of the State where the unitized lands are located, or of the United States, or regulations issued thereunder in any way affecting such party, or as a waiver by any such party of any right beyond his or its authority to waive.

25. UNAVOIDABLE DELAY. All obligations under this agreement requiring the Unit Operator to commence or continue drilling, or to operate on, or produce unitized substances from any of the lands covered by this agreement, shall be suspended while the Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, acts of God, Federal, State, or municipal law or agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials or equipment in the open market, or other matters beyond the reasonable control of the Unit Operator, whether similar to matters herein enumerated or not.

26. NONDISCRIMINATION. In connection with the performance of work under this agreement, the Unit Operator agrees to comply with all the provisions of section 202 (1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended, which are hereby incorporated by reference in this agreement.

27. LOSS OF TITLE. In the event title to any tract of unitized land shall fail and the true owner cannot be induced to join in this unit agreement, such tract shall be automatically regarded as not committed hereto, and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title. In the event of a dispute as to title to any royalty, working interest, or other interests subject thereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled; provided, that, as to Federal lands or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the AO, to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

Unit Operator as such is relieved from any responsibility for any defect or failure of any title hereunder.

28. NONJOINDER AND SUBSEQUENT JOINDER. If the owner of any substantial interest in a tract within the unit area fails or refuses to subscribe or consent to this agreement, the owner of the working interest in that tract may withdraw the tract from this agreement by written notice delivered to the proper BLM office and the Unit Operator prior to the approval of this agreement by the AO. Any oil or gas interests in lands within the unit area not committed hereto prior to final approval may thereafter be committed hereto by the owner or owners thereof subscribing or consenting to this agreement, and, if the interest is a working interest, by the owner of such interest also subscribing to the unit operating agreement. After operations are commenced hereunder, the right of subsequent joinder, as provided in this section, by a working interest owner is subject to such requirements or approval(s), if any, pertaining to such joinder, as may be provided for in the unit operating agreement. After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by

the working interest owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this unit agreement unless the corresponding working interest is committed hereto. Joinder to the unit agreement by a working interest owner, at any time, must be accompanied by appropriate joinder to the unit operating agreement, in order for the interest to be regarded as committed to this agreement. Except as may otherwise herein be provided, subsequent joinders to this agreement shall be effective as of the date of the filing with the AO of duly executed counterparts of all or any papers necessary to establish effective commitment of any interest and/or tract to this agreement.

29. COUNTERPARTS. This agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instrument in writing specifically referring hereto and shall be binding upon all those parties who have executed such a counterpart, ratification, or consent hereto with the same force and effect as if all such parties had signed the same document, and regardless of whether or not it is executed by all other parties owning or claiming an interest in the lands within the above-described unit area.

[4] 30. SURRENDER. Nothing in this agreement shall prohibit the exercise by any working interest owner of the right to surrender vested in such party by any lease, sublease, or operating agreement as to all or any part of the lands covered thereby, provided that each party who will or might acquire such working interest by such surrender or by forfeiture as hereafter set forth, is bound by the terms of this agreement.

If as a result of any such surrender, the working interest rights as to such lands become vested in any party other than the fee owner of the unitized substances, said party may forfeit such rights and further benefits from operations hereunder as to said land to the party next in the chain of title who shall be and become the owner of such working interest.

If as the result of any such surrender or forfeiture working interest rights become vested in the fee owner of the unitized substances, such owner may:

(a) Accept those working interest rights subject to this agreement and the unit operating agreement; or

(b) Lease the portion of such land as is included in a participating area established hereunder subject to this agreement and the unit operating agreement; or

(c) Provide for the independent operation of any part of such land that is not then included within a participating area established hereunder.

If the fee owner of the unitized substances does not accept the working interest rights subject to this agreement and the unit operating agreement or lease such lands as above provided within 6 months after the surrendered or forfeited, working interest rights become vested in the fee owner; the benefits and obligations of operations accruing to such lands under this agreement and the unit operating agreement shall be shared by the remaining owners of unitized working interests in accordance with their respective working interest ownerships, and such owners of working interests shall compensate the fee owner of unitized substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease in effect when the lands were unitized.

An appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of such surrendered or forfeited working interests subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within 30 days.

The exercise of any right vested in a working interest owner to reassign such working interest to the party from whom obtained shall be subject to the same conditions as set forth in this section in regard to the exercise of a right to surrender.

[4] 31. TAXES. The working interest owners shall render and pay for their account and the account of the royalty owners all valid taxes on or measured by the unitized substances in and under or that may be produced, gathered and sold from the land covered by this agreement after its effective date, or upon the proceeds derived therefrom. The working interest owners on each tract shall and may charge the proper proportion of said taxes to royalty owners having interests in said-tract, and may currently retain and deduct a sufficient amount of the unitized substances or derivative products, or net proceeds thereof, from the allocated share of each royalty owner to secure reimbursement for the taxes so paid. No such taxes shall be charged to the United States or the State of —— or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

[4] 32. NO PARTNERSHIP. It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing contained in this agreement, expressed or implied, nor any operations

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[4] Optional sections and subsection. (Agreements submitted for final approval should not identify section or provision as "optional.")

conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed and have set opposite their respective names the date of execution.

Unit Operator

Working Interest Owners

Other Interest Owners

General Guidelines

1. Executed agreement to be legally com- lete.

2. Agreement submitted for approval must ontain Exhibit A and B in accordance with nodels shown in §§ 3186.1-1 and 3186.1-2 of his title.

3. Consents should be identified (in pencil) y tract numbers as listed in Exhibit B and ssembled in that order as far as practical. nit agreements submitted for approval hall include a list of the overriding royalty terest owners who have executed ratifica- ons of the unit agreement. Subsequent inders by overriding royalty interest wners shall be submitted in the same anner, except each must include or be ac- mpanied by a statement that the corre- onding working interest owner has con- nted in writing to such joinder. Original tifications of overriding royalty owners ll be kept on file by the Unit Operator or s designated agent.

. All leases held by option should be ted on Exhibit B with an explanation as the type of option, i.e., whether for oper- ing rights only, for full leasehold record le, or for certain interests to be earned by rformance. In all instances, optionee com- tting such interests is expected to exer- e option promptly.

. All owners of oil and gas interests must invited to join the unit agreement, and tement to that effect must accompany ecuted agreement, together with summa- of results of such invitations. A written son for all interest owners who have not ned shall be furnished by the unit opera-

. In the event fish and wildlife lands are luded, add the following as a separate tion:

Wildlife Stipulation. Nothing in this unit eement shall modify the special Federal e stipulations applicable to lands under jurisdiction of the United States Fish Wildlife Service."

In the event National Forest System s are included within the unit area, add following as a separate section:

orest Land Stipulation. Notwithstand- any other terms and conditions contained in this agreement, all of the stipulations and conditions of the individual leases between the United States and its lessees or their successors or assigns embracing lands within the unit area included for the protection of lands or functions under the jurisdiction of the Secretary of Agriculture shall remain in full force and effect the same as though this agreement had not been entered into, and no modification thereof is authorized except with the prior consent in writing of the Regional Forester, United States Forest Service, ——,

."

8. In the event National Forest System lands within the Jackson Hole Area of Wyoming are included within the unit area, additional "special" stipulations may be required to be included in the unit agreement by the U.S. Forest Service, including the Jackson Hole Special Stipulation.

9. In the event reclamation lands are included, add the following as a new separate section:

"Reclamation Lands. Nothing in this agreement shall modify the special, Federal lease stipulations applicable to lands under the jurisdiction of the Bureau of Reclamation."

10. In the event a powersite is embraced in the proposed unit area, the following section should be added:

"Powersite. Nothing in this agreement shall modify the special, Federal lease stipulations applicable to lands under the jurisdiction of the Federal Energy Regulatory Commission."

11. In the event special surface stipulations have been attached to any of the Federal oil and gas leases to be included, add the following as a separate section:

"Special surface stipulations. Nothing in this agreement shall modify the special Federal lease stipulations attached to the individual Federal oil leases."

12. In the event State lands are included in the proposed unit area, add the appropriate State Lands Section as separate section. (See § 3181.4(a) of this title).

13. In the event restricted Indian lands are involved, consult the AO regarding appropriate requirements under § 3181.4(b) of this title.

CERTIFICATION—DETERMINATION

Pursuant to the authority vested in the Secretary of the Interior, under the Act approved February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. sec. 181, *et seq.*, and delegated to (the appropriate Name and Title of the authorized officer, BLM) under the authority of 43 CFR 3180, I do hereby:

A. Approve the attached agreement for the development and operation of the ——, Unit Area, State of ——. This approval shall be invalid *ab initio* if the public interest requirement under § 3183.4(b) of this title is not met.

B. Certify and determine that the unit plan of development and operation contemplated in the attached agreement is necessary and advisable in the public interest for the purpose of more properly conserving the natural resources.

C. Certify and determine that the drilling, producing, rental, minimum royalty, and royalty requirements of all Federal leases committed to said agreement are hereby established altered, changed, or revoked to conform with the terms and conditions of this agreement.

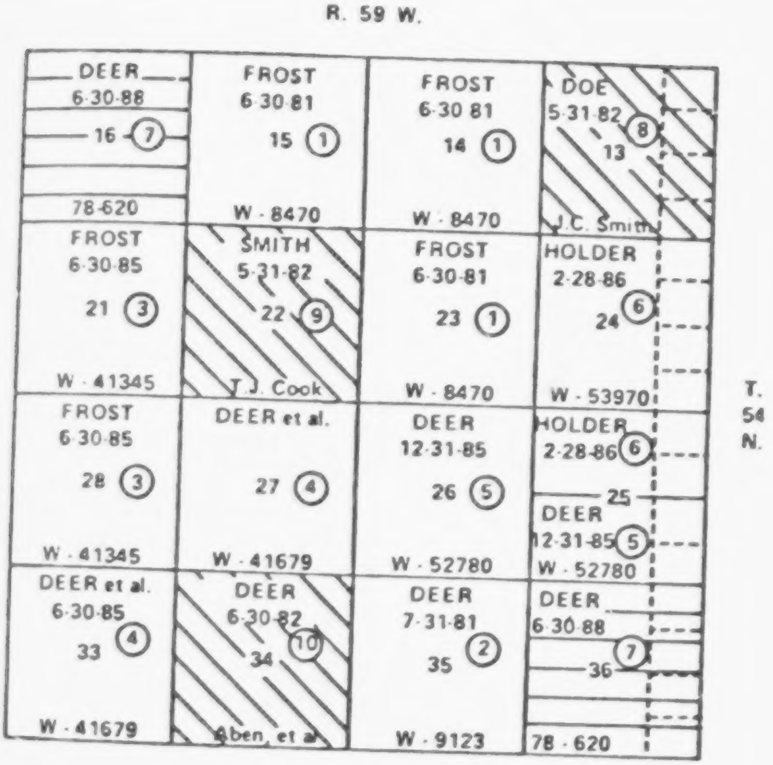
Dated ———.

(Name and Title of authorized officer of the Bureau of Land Management)

[48 FR 26766, June 10, 1983. Redesignated and amended at 48 FR 36587, 36588, Aug. 12, 1983; 53 FR 17365, May 16, 1988; 53 FR 31867, 31959, Aug. 22, 1988]

§ 3186.1-1 **Model Exhibit "A".**

Company Name
Exhibit A
Swan Unit Area
Campbell County, Wyoming


R. 59 W.
T. 54 N.
DEER 6-30-88 16 ⑦ 78-620
FROST 6-30-81 15 ① W-8470
FROST 6-30 81 14 ① W-8470
DOE 5-31-82 13 ⑧ J.C. Smith
FROST 6-30-85 21 ③ W-41345
SMITH 5-31-82 22 ⑨ T.J. Cook
FROST 6-30-81 23 ① W-8470
HOLDER 2-28-86 24 ⑥ W-53970
FROST 6-30-85 28 ③ W-41345
DEER et al. 27 ④ W-41679
DEER 12-31-85 26 ⑤ W-52780
HOLDER 2-28-86 ⑥ 25 DEER 12-31-85 ⑤ W-52780
DEER et al. 6-30-85 33 ④ W-41679
DEER 6-30-82 34 ⑩ Aben, et al.
DEER 7-31-81 35 ② W-9123
DEER 6-30-88 36 ⑦ 78-620

① Means tract number as listed on Exhibit B

☐ Public Land

☰ State Land

▨ Patented Land

Scale - Generally 2" = 1 mile.

Include acreage for all irregular sections and lots.

§ 3186.1-2 Model Exhibit B—SWAN UNIT AREA, CAMPBELL COUNTY, WYOMING

Tract No.	Description of land	No. of acres	Serial No. and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Overriding royalty and percentage	Working interest and percentage
	All in the area of T54N-R59W, 6th P.M.						
	Federal Land						
1	Sec. 14: All Sec. 15: All Sec. 23: All	1,920.00	W-8470, 6-30-81	U.S. All	T.J. Cook 100%	T.J. Cook 2%	Frost Oil Co. 100%
2	Sec. 35: All	640.00	W-9123, 7-31-81	U.S. All	O.M. Odom 100%	O.M. Odom 1%	Deer Oil Co. 100%
3	Sec. 21: All Sec. 28: All	1,280.00	W-41345, 6-30-85	U.S. All	Max Pen 50% Sam Small 50%	Max Pen 1% Sam Small 1%	Frost Oil Co. 100%
4	Sec. 27: All Sec. 33: All	1,280.00	W-41679, 6-30-85	U.S. All	Al Preen 100%	Al Preen 2%	Deer Oil Co. 50% Doe Oil Co.,30% Able Drilling Co. 20% Deer Oil Co. 50% Doe Oil Co., 30% Able Drilling Co. 20%
5	Sec. 26: All	961.50	W-52780, 12-31-85	U.S. All	Deer Oil Co. 100%	J.G. Goodin 2%	Deer Oil Co. 100%

	Sec. 25: Lots 3,4, SW¼, W½SE¼						
6	Sec. 24: Lots 1,2,3,4,W½, W½E½ (All) Sec. 25: Lots 1,2,NW¼, W½NE/4	965.60	W-53970, 2-28-86	U.S. All	T.H. Holder 100%		T.H. Holder 100%.
	6 Federal tracts totaling 7,047.30 acres or 68.76018% of unit area.						
	State Land						
7	Sec. 16: All Sec. 36 Lots 1, 2, 3, 4, W½, W½E½ (All)	1,280.60	78620, 6-30-88	State All	Deer Oil Co. 100%	T.T. Timo 2%	Deer Oil Co. 100%
	1 State tract totaling 1,280.60 acres or 12.49476% of unit area.						
	Patented Land						
8	Sec. 13: Lots 1, 2, 3, 4, W½, W½E½ (All)	641.20	5-31-82	J.C. Smith 100%	Doe Oil Co. 100%		Doe Oil Co. 100%.
9	Sec. 22: All	640.00	5-31-82	T.J. Cook: 100%	W.W. Smith 100%	Sam Spade 1%	W.W. Smith 100%.
10	Sec. 34: All	640.00	6-30-82	A.A. Aben: 75%, L.P. Carr 25%.	Deer Oil Co. 100%		Deer Oil Co. 100%
	3 Patented tracts totaling 1,921.20 acres or 18.74506% of unit area.						

Total: 10 tracts 10,249.10 acres in entire unit area.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, and amended at 51 FR 34604, Sept. 30, 1986]

§ 3186.2 Model collective bond.

COLLECTIVE CORPORATE SURETY BOND

Know all men by these presents. That we, ——— (Name of unit operator), signing as Principal, for and on behalf of the record owners of unitized substances now or hereafter covered by the unit agreement for the ——— (Name of unit), approved ——— (Date) ——— (Name and address of Surety), as Surety are jointly and severally held and firmly bound unto the United States of America in the sum of ——— (Amount of bond) Dollars, lawful money of the United States, for the use and benefit of and to be paid to the United States and any entryman or patentee of any portion of the unitized land here-to-fore entered or patented with the reservation of the oil or gas deposits to the United States, for which payment, well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns by these presents.

The condition of the foregoing obligation is such, that, whereas the Secretary of the Interior on ——— (Date) approved under the provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. secs. 181 *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, a unit agreement for the development and operation of the ——— (Name of unit and State); and

Whereas said Principal and record owners of unitized substances, pursuant to said unit agreement, have entered into certain covenants and agreements as set forth therein, under which operations are to be conducted; and

Whereas said Principal as Unit Operator has assumed the duties and obligations of the respective owners of unitized substances as defined in said unit agreement; and

Whereas said Principal and Surety agree to remain bound in the full amount of the bond for failure to comply with the terms of the unit agreement, and the payment of rentals, minimum royalties, and royalties due under the Federal leases committed to said unit agreement; and

Whereas the Surety hereby waives any right of notice of and agrees that this bond may remain in force and effect notwithstanding;

(a) Any additions to or change in the ownership of the unitized substances herein described;

(b) Any suspension of the drilling or producing requirements or waiver, suspension, or reduction of rental or minimum royalty payments or reduction of royalties pursuant to applicable laws or regulations thereunder; and

Whereas said Principal and Surety agree to the payment of compensatory royalty under the regulations of the Interior Department in lieu of drilling necessary offset wells in the event of drainage; and

Whereas nothing herein contained shall preclude the United States (from requiring an additional bond at any time when deemed necessary);

Now, therefore, if the said Principal shall faithfully comply with all of the provisions of the above-indentified unit agreement and with the terms of the leases committed thereto, then the above obligation is to be of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered this ——— day of ———, in the presence of:

Witnesses:

____

(Principal)

____

____

____

(Surety)

§ 3186.3 Model for designation of successor unit operator by working interest owners.

Designation of successor Unit Operator ——— Unit Area, County of ———, State of ———, No. ———.

This indenture, dated as of the — day of ——, 19—, by and between ——, hereinafter designated as "First Party," and the owners of unitized working interests, hereinafter designated as "Second Parties,"

Witnesseth: Whereas under the provisions of the Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. secs. 181, *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, the Secretary of the Interior, on the ——— day of ———, 19—, approved a unit agreement ——— Unit Area, wherein ——— is designated as Unit Operator, and

Whereas said ——— has resigned as such Operator[1] and the designation of a successor Unit Operator is now required pursuant to the terms thereof; and

Whereas the First Party has been and hereby is designated by Second Parties as Unit Operator, and said First Party desires to assume all the rights, duties, and obligations of Unit Operator under the said unit agreement:

Now, therefore, in consideration of the premises hereinbefore set forth and the promises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of the ——— unit agreement, and the

---

[1] Where the designation of a successor Unit Operator is required for any reason other than resignation, such reason shall be substituted for the one stated.

Second Parties covenant and agree that, effective upon approval of this indenture by the (Name and Title of authorized officer, BLM) First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges as Unit Operator, pursuant to the terms and conditions of said unit agreement; said Unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

————————————————

————————————————

(Witnesses)

————————————————

————————————————

(Witnesses)

————————————————

(First Party)

————————————————

(Second Party)

I hereby approve the foregoing indenture designating ——— as Unit Operator under the unit agreement for the ——— Unit Area, this — day of ———, 19—.

————————————————

Authorized officer of the Bureau of Land Management.

[48 FR 26766, June 10, 1983. Redesignated at 48 FR 36587, Aug. 12, 1983, as amended at 51 FR 34604, Sept. 30, 1986]

§ 3186.4 Model for change in unit operator by assignment.

Change in Unit Operator ——— Unit Area, County of ———, State of ———, No. —. This indenture, dated as of the — day of ———, 19—, by and between ——— hereinafter designated as "First Party," and ——— hereinafter designated as "Second Party."

Witnesseth: Whereas under the provisions of the Act of February 25, 1920, 41 Stat. 437 30 U.S.C. secs. 181, *et seq.*, as amended by the Act of August 8, 1946, 60 Stat. 950, the Department of the Interior, on the — day of ———, 19—, approved a unit agreement for the ——— Unit Area, wherein the First Party is designated as Unit Operator; and

Whereas the First Party desires to transfer, assign, release, and quitclaim, and the Second Party desires to assume all the rights, duties and obligations of Unit Operator under the unit agreement; and

Whereas for sufficient and valuable consideration, the receipt whereof is hereby acknowledged, the First Party has transferred, conveyed, and assigned all his/its rights under certain operating agreements involving lands within the area set forth in said unit agreement unto the Second Party;

Now, therefore, in consideration of the premises hereinbefore set forth, the First Party does hereby transfer, assign, release, and quitclaim unto Second Party all of First Party's rights, duties, and obligations as Unit Operator under said unit agreement; and

Second Party hereby accepts this assignment and hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of said unit agreement to the full extent set forth in this assignment, effective upon approval of this indenture by the (Name and Title of authorized officer, BLM); said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

————————————————

————————————————

(Witnesses)

————————————————

————————————————

(Witnesses)

————————————————

(First Party)

————————————————

(Second Party)

I hereby approve the foregoing indenture designating ——— as Unit Operator under the unit agreement for the ——— Unit Area, this — day of ———, 19—.

Authorized officer of the Bureau of Land Management

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections: General

Sec.

3190.0-1 Purpose.
3190.0-3 Authority.
3190.0-4 Objective.
3190.0-5 Definitions.
3190.0-7 Cross references.
3190.1 Proprietary data.
3190.2 Recordkeeping, funding and audit.
3190.2-1 Recordkeeping.
3190.2-2 Funding.
3190.2-3 Audit.
3190.3 Sharing of civil penalties.

Subpart 3191—Delegation of Authority

3191.1 Petition for delegation.
3191.1-1 Petition.
3191.1-2 Eligibility.

Sec.
3191.1-3 Action upon petition.
3191.1-4 Public hearing on petition.
3191.2 Terms of delegation.
3191.3 Termination and reinstatement.
3191.3-1 Termination.
3191.3-2 Reinstatement.
3191.4 Standards of delegation.
3191.5 Delegation for Indian lands.
3191.5-1 Indian lands included in delegation.
3191.5-2 Indian lands withdrawn from delegation.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a-398e), the Act of June 30, 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

SOURCE: 52 FR 27182, July 17, 1987, unless otherwise noted.

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections: General

§ 3190.0-1 Purpose.

The purpose of the part is to provide procedures for approval, implementation and administration of delegations of authority, cooperative agreements and contracts for inspection, enforcement and investigative activities related to oil and gas production operations on Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0-3 Authority.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0-4 Objective.

The objective of this part is to assure that delegations of authority, cooperative agreements and contracts as provided for under the Federal Oil and Gas Royalty Management Act are carried out in accordance with the provisions of the Act and this title.

§ 3190.0-5 Definitions.

As used in this part, the term:

(a) *Inspection* means the examination of oil and gas lease sites, records or motor vehicle documentation by an authorized representative of the Secretary of the Interior to determine if there is compliance with applicable regulations, Onshore Oil and Gas orders, approvals, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(b) *Investigation* means any inquiry into any action by or on behalf of a lessee or operator of a Federal or Indian lease, or transporter of oil from such lease.

(c) *Contractor* means any individual, corporation, association, partnership, consortium or joint venture who has contracted to carry out activities under this part.

(d) *Enforcement* means action taken by an authorized representative of the Secretary in order to obtain compliance with applicable regulations, Onshore Oil and Gas Orders, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(e) *Indian lands* means any lands or interests in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 28, 1906 (34 Stat. 539).

(f) *Proprietary data* means information obtained from a lessee that constitutes trade secrets, or commercial or financial information that is privileged or confidential, or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)).

§ 3190.0-7 Cross references.

(a) 25 CFR 211.18; 212.24; 213.34.
(b) 30 CFR part 229.

(c) 43 CFR part 3160.

§ 3190.1 Proprietary data.

With regard to any data or information obtained by a State, Indian tribe or individual, whether under a delegation of authority, cooperative agreement or contract, the following applies:

(a) Proprietary data shall be made available to a State or Indian tribe pursuant to a cooperative agreement under the provisions of 30 U.S.C. 1732 if such State or Indian tribe:

(1) Consents in writing to restrict the dissemination of such information to such persons directly involved in an investigation under 30 U.S.C. 1732 who need the information to conduct the investigation;

(2) Agrees in writing to accept liability for wrongful disclosure;

(3) In the case of a State, the State demonstrates that such information is essential to the conduct of an investigation or to litigation under 30 U.S.C. 1734; and

(4) In the case of an Indian tribe, the tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure.

(b)(1) Any person or State that obtains proprietary data pursuant to a delegation of authority, cooperative agreement or contract under this part s subject to the same provisions of law vith respect to the disclosure of such nformation as would apply to any officer or employee of the United States.

(2) Disclosure of proprietary data btained pursuant to a delegation of uthority, cooperative agreement, or ontract under this part may not be ompelled under State law.

3190.2 Recordkeeping, funding and audit.

3190.2-1 Recordkeeping.

(a) Records and accounts relating to ctivities under delegations of author- y, cooperative agreements or con- racts shall be identified in the delega- on, cooperative agreement or con- ract.

(b) All records and other materials elating to a delegation of authority, cooperative agreement or contract shall be maintained by the State, Indian Tribe or contractor for a period of 6 years from the date they are generated or such other period as may be specified in the delegation, cooperative agreement or contract.

§ 3190.2-2 Funding.

(a) States and Tribes shall provide adequate funding for administration and execution of activities carried out under a delegation or cooperative agreement.

(b) Reimbursement for allowable costs incurred by a State, Indian tribe or contractor as a result of activities carried out under a delegation of authority, cooperative agreement or contract shall be as negotiated, with the following limitations:

(1) Up to 100 percent for a delegation of authority; or

(2) Up to 50 percent for a cooperative agreement.

(c) Funding shall be subject to the availability of funds.

(d) States, Indian tribes or contractors shall maintain financial records relating to the funds received and expended under a delegation of authority, cooperative agreement or contract as specified in the delegation of authority, cooperative agreement or contract.

(e) Reimbursement shall be at least quarterly and only shall be made upon submission of an invoice or request for reimbursement to the authorized officer.

§ 3190.2-3 Audit.

In maintaining financial records relating to the funds received and expended under a delegation of authority, cooperative agreement, or contract, States, Indian tribes and contractors shall comply with generally accepted accounting principles and audit requirements established by the Department of the Interior and Bureau of Land Management.

§ 3190.3 Sharing of civil penalties.

Fifty percent of any civil penalty collected by the United States as a result of activities carried out by a State under a delegation of authority or a State or Indian tribe under a cooperative agreement shall be payable to that State or Indian tribe upon receipt by the United States. Such amount shall be deducted from compensation due to the State or Indian tribe by the United States under the delegation of authority or cooperative agreement.

Subpart 3191—Delegation of Authority

§ 3191.1 Petition for delegation.

§ 3191.1-1 Petition.

The Governor or other authorized official of any eligible State may request in writing that the Director delegate all or part of his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State and on Indian lands within the State where the affected Indian tribe or Indian allottee has given written permission for such inspection, enforcement and investigation. Requests by a State for delegation of other activities may be granted by the Director with the approval of the Secretary.

§ 3191.1-2 Eligibility.

Any State with producing oil or gas leases on Federal or Indian lands may request a delegation of authority.

§ 3191.1-3 Action upon petition.

Upon request for a delegation of authority, the Director shall determine if:

(a) The State has proposed an acceptable plan for carrying out the delegated activities and will provide adequate resources to achieve the purposes of 30 U.S.C. 1735. This plan shall, at a minimum:

(1) Identify specific authorities and responsibilities for which the State is requesting a delegation of authority and whether it is applicable to Federal lands only or includes Indian lands;

(2) Provide evidence of written permission of the affected Indian tribe(s) or allottee(s) for such lands;

(3) Include specifics for carrying out the delegated activities;

(4) Indicate the inspector resources for carrying out the delegated activities and documentation of inspector qualifications;

(5) Describe the proposed record keeping for funding purposes;

(6) Detail the frequency and method of payment; and

(7) Include copies of any non-Federal forms that are to be used.

(b) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Department of the Interior in accordance with the provisions of 30 U.S.C. 1735.

(c) The delegation will be carried out in coordination with activities retained by the Bureau so that such delegation will not create an unreasonable burden on any lessee.

§ 3191.1-4 Public hearing on petition.

Prior to the granting of any delegation of authority, the notice of proposed delegation shall be published in the FEDERAL REGISTER. The FEDERAL REGISTER notice shall provide an opportunity for a public hearing in the affected State.

§ 3191.2 Terms of delegation.

(a) Delegations shall be continuing, contingent upon available funding, providing that there is an annual finding by the Director that the provisions of the delegation and the mineral leasing laws are still being carried out and that the requirements of § 3191.1-3 (a), (b) and (c) of this title are still in effect.

(b) Authority delegated to a State under this subpart shall not be redelegated.

(c) The State regulatory authority shall maintain sufficient qualified, personnel to comply with the terms and purpose of the delegation.

(d) Inspection identification cards shall be issued by the authorized officer to all certified State inspectors for the purpose of identifying the bearer as an authorized representative of the Secretary. Identification cards remain the property of the United States.

(e) The delegation shall provide for coordination with designated offices of the Bureau of Land Management, the Minerals Management Service, and, where appropriate, the Bureau of ndian Affairs, Forest Service, and other surface management agencies.

(f) The delegation shall provide for nnual program review.

(g) The delegation shall provide for nnual budget and program reporting n conjunction with the Federal udget process.

(h) The Director reserves the right o make inspections on Federal and ndian leases inspected by a State nder this subpart for the purpose of valuating the manner in which the elegation is being carried out.

(i) The Director reserves the right to ct independently to carry out his/her esponsibilities under the law.

3191.3 Termination and reinstatement.

3191.3–1 Termination.

(a) The delegation may be terminat- d by mutual written consent at any me.

(b) The Director may revoke a dele- ation if it is determined that the tate has failed to meet the minimum andards for complying with the dele- ated authority.

(c) Prior to any action to revoke a elegation, the Director shall notify e State in writing of the deficiencies the program leading to such revoca- on.

(d) Upon notification of intent to voke a delegation, the State shall ve 30 days to respond with a plan to rrect the cited deficiencies. If the irector determines that the plan of rrection is acceptable, the Director all then approve the plan and speci- the timeframe within which the ed deficiencies shall be corrected.

e) In the event the Director makes etermination to revoke a delegation authority, the State shall be provid- an opportunity for a hearing prior final action.

191.3–2 Reinstatement.

erminated delegations of authority y be reinstated as set out below:

a) For a delegation terminated by tual consent under § 3191.3-1(a) of s title, the State shall apply for re- tatement by filing a petition with e Director, who shall determine ether such reinstatement should be nted.

(b) For a delegation of authority revoked by the Director, the State shall file a petition requesting reinstatement. In applying for reinstatement, the State shall provide written evidence that it has remedied all defects for which the delegation was revoked and that it is fully capable of resuming the activities carried out under the delegation. Upon receipt of the petition, the following actions shall be taken:

(1) The authorized officer, after review of the petition, may recommend approval of the reinstatement but shall provide proof that the deficiencies have been corrected and that the State is fully capable of carrying out the delegation.

(2) The Director shall review the petition and the recommendation of the authorized officer and may approve the reinstatement of a delegation upon a determination that the findings of the authorized officer are acceptable.

§ 3191.4 Standards of delegation.

(a) The Director shall establish minimum standards to be used by a State in carrying out activities established in the delegation.

(b) The delegation shall identify functions, if any, that are to be carried out jointly.

(c) A delegation shall be made in accordance with the requirements of this section.

(d) Copies of delegations shall be on file in the Washington Office of the Bureau and shall be available for public inspection.

§ 3191.5 Delegation for Indian lands.

§ 3191.5–1 Indian lands included in delegation.

(a) No activity under a delegation made under this subpart may be carried out on Indian lands without the written permission of the affected Indian tribe or allottee.

(b) A State requesting a delegation involving Indian lands shall provide, as evidence of permission, a written agreement signed by an appropriate official(s) of the Indian tribe for tribal lands, or by the individual allottee(s) or their representative(s) for allotted lands. The agreement shall at a minimum specify the type and extent of activities to be carried out by the State under the agreement, and provisions for State access to carry out the specified activities.

(c) Delegations covering Indian lands shall be separate from delegations covering Federal lands.

§ 3191.5-2 Indian lands withdrawn from delegation.

(a) When an Indian tribe or allottee withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe or allottee shall provide written notice of its withdrawal of permission to the State.

(b) Immediately upon receipt of a notice of withdrawal of permission, the State shall provide written notification of said notice to the authorized officer, who immediately shall take all necessary action to provide for inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission draw from an Indian tribe or allottee, the delegation on the lands covered by the notice shall terminate.

(d) Upon termination of a delegation covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

Group 3200—Geothermal Resources Leasing

NOTE: The collections of information contained in parts 3200, 3210, 3220, 3240, 3250, and 3260 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0034, 1004-0074, 1004.0132, and 1004-0160. The information will be used to maintain an orderly program for leasing, development, and production of Federal geothermal resources. Responses are required to obtain benefits in accordance with the Geothermal Steam Act of 1970, as amended.

Public reporting burden for this information is estimated to average 1.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Division of Information Resources Management, Bureau of Land Management, 1800 C Street, NW., Premier Building, Room 208, Washington DC 20240; and the Paperwork Reduction Project (1004-0160), Office of Management and Budget, Washington, DC 20503.

(See 54 FR 13885, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

PART 3200—GEOTHERMAL RESOURCES LEASING: GENERAL

Subpart 3200—Geothermal Resources Leasing: General

Sec.

3200.0-3 Authority.
3200.0-5 Definitions.
3200.0-6 Use of surface.
3200.1 Competitive and noncompetitive leasing areas.
3200.2 Management of Federal minerals from reserved mineral estates.

Subpart 3201—Available Lands; Limitations; Unit Agreements

3201.1 Lands subject to geothermal leasing.
3201.1-1 General.
3201.1-2 Department of the Interior.
3201.1-3 Department of Agriculture.
3201.1-4 Federal Energy Regulatory Commission.
3201.1-5 Patented lands.
3201.1-6 Excepted areas.
3201.2 Acreage limitations.
3201.3 Leases within unit areas.

Subpart 3202—Qualifications of Lessees

3202.1 Who may hold leases.
3202.2 Proof of qualifications.
3202.2-1 Proof which may be required.
3202.2-2 Attorney-in-fact/agent.
3202.2-3 Showing as to sole party in interest.
3202.2-4 Heirs and devisees (estates).

Subpart 3203—Leasing Terms

3203.1 Primary term, additional term and extensions.
3203.1-1 Dating of leases.
3203.1-2 Primary term.
3203.1-3 Additional term.
3203.1-4 Extensions.
3203.1-5 Segregation of leases on commitment to, or contraction of, cooperative or unit plan or communitization or drilling agreement.

Sec.
3203.1-6 Conversion to mineral leases or mining claims.
3203.2 Lease acreage limitation.
3203.3 Consolidation of leases.
3203.4 Description of lands.
3203.5 Diligent exploration.
3203.6 Plans of development and operation.
3203.7 Reservation to the United States of oil, hydrocarbon gas, and helium.
3203.8 Compensation for drainage; compensatory royalty.
3203.9 Readjustment of terms and conditions.

Subpart 3204—Surface Management Requirements; Special Requirements

3204.1 General.

Subpart 3205—Fees, Rentals and Royalties

3205.1 Payments.
3205.1-1 Form of remittance.
3205.1-2 Where submitted.
3205.2 Filing fees.
3205.3 Rentals and royalties.
3205.3-1 Payment with application.
3205.3-2 Payment of annual rental.
3205.3-3 [Reserved]
3205.3-4 Fractional interests.
205.3-5 Royalty on production.
205.3-6 Royalty on commercially demineralized water.
205.3-7 Waiver, suspension or reduction of rental or royalty.
205.3-8 Suspension of operations and production or suspension of operations.
205.3-9 Readjustments.
205.4 Rental and minimum royalty liability of lands committed to cooperative or unit plans.
205.4-1 Prior to production.
205.4-2 After production.

Subpart 3206—Lease Bonds

206.1 Bond obligations and filing.
206.1-1 Bond obligations.
206.1-2 Filing.
06.2 Lease bond.
06.3 Liability.
06.4 Statewide bond.
06.5 Nationwide bond.
06.6 Unit operator's bond.
06.7 Default.
06.7-1 Payment by surety.
06.7-2 Penalty.
06.8 Applicability of provisions to existing bonds.
06.9 Terminiation of period of liability.

Subpart 3207—Leases for a Fractional or Future Interest

07.1 General.

Sec.
3207.2 Noncompetitive leases.
3207.2-1 Qualifications.
3207.2-2 Applications.
3207.2-3 Leasing.
3207.2-4 Agency action on applications. [Reserved]
3207.3 Competitive leasing.
3207.3-1 Nominations for leases.
3207.3-2 Leasing.

Subpart 3208—[Reserved]

Subpart 3209—Geothermal Resources Exploration Operations

3209.0-1 Purposes.
3209.0-2 Objectives.
3209.0-5 Definitions.
3209.1 Notice of intent and permit to conduct exploration operations (geothermal resources).
3209.1-1 Application.
3209.1-2 Review of Notice of Intent.
3209.2 Exploration operations.
3209.3 Completion of operations.
3209.4 Bond requirement.
3209.4-1 General.
3209.4-2 Riders to existing bond forms.
3209.4-3 Termination of period of liability.

AUTHORITY: 30 U.S.C. 1001-1027.

SOURCE: 38 FR 35082, Dec. 21, 1973, unless otherwise noted.

Subpart 3200—Geothermal Resources Leasing: General

§ 3200.0-3 Authority.

These regulations are issued pursuant to the Geothermal Steam Act of 1970, as amended (84 Stat. 1566; 30 U.S.C. 1001-1025) and rights to develop and utilize geothermal resources in land subject to these regulations may be acquired only in accordance with these regulations.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17366, May 16, 1988]

§ 3200.0-5 Definitions.

As used in Group 3200, the term:

(a) *The Act* means the Geothermal Steam Act of 1970.

(b) *Secretary* means the Secretary of the Interior.

(c) *Geothermal resources* means geothermal steam and associated geothermal resources which include:

(1) All products of geothermal processes, embracing indigenous steam,

hot water and hot brines; (2) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations, (3) heat or other associated energy found in geothermal formations; and (4) any byproducts derived from them.

(d) *Byproduct* means (1) any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and (2) commercially demineralized water.

(e) *Party in interest* means a party who is or will be vested with any interest under the lease as defined in paragraph (f) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest in such lease.

(f) *Interest* means any interest whatever in a geothermal lease, including, but not limited to: (1) A record title interest; (2) a working interest; (3) an operating right; (4) an overriding royalty interest or other similar fiduciary payments or arrangements; or (5) options. *Interest* does not include stock ownership, stockholding or stock control in a lease application or offer or in a bid, except for purposes of acreage limitations in § 3201.2 of this title and qualifications of leases in subpart 3202 of this title.

(g) *Director* means the Director of the Bureau of Land Management.

(h) *Primary term* means the first 10 years in the life of the lease, exclusive of any period of suspension of operations or production, or both.

(i) *Area of operation* means that area of the leased lands which is required for exploration, development and producing operations, and which is delineated on a map or plat which is made a part of the approved plan of operations. It encompasses the area generally needed for wells, flow lines, separators, surge tanks, drill pads, mud pits, workshops, and other such facilities used for on-project geothermal resources field exploration, development and production operations.

(j) *Commercial quantities* means quantities sufficient to provide a return after all variable costs of production have been met.

(k) *Known geothermal resource area* or *KGRA* means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

(l) *Primarily valuable* means the principal mineral value for which the leasehold is being produced.

(m) *Authorized officer* means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3200.

(n) *Proper BLM office* means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Group 3200.

(o) *Anniversary date* means the same day and month in succeeding years as that on which the lease became effective.

(p) *Surface managing agency* means any Federal agency outside of the Department of the Interior which has jurisdiction over the surface overlying Federally-owned minerals.

(q) *Bureau* means the Bureau of Land Management.

(r) *Service* means the Minerals Management Service.

(s) *Transfer* means any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: *assignment* which means a transfer of all or a portion of the lessee's record title interest in a leasee; and *sublease* which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production

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nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(t) *Lessee* means a person or entity holding record title in a lease issued by the United States.

(u) *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

(v) *Operator* means any person or entity, including but not limited to the lessee, operating rights owner, or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(w) *Public domain lands* means lands, including mineral estates, that never left the ownership of the United States, lands that were obtained by the United States in exchange for public domain lands, lands that have reverted to the ownership of the United States through the operation of the public land laws, and other lands specifically identified by the Congress as part of the public domain.

(x) *Produced or utilized in commercial quantities* means the completion of a well producing geothermal resources in commercial quantities or the completion of a well capable of producing geothermal resources in commercial quantities if the authorized officer determines that diligent efforts are being made toward the utilization of the resources.

(y) *Significant thermal features within units of the National Park System* shall include, but not be limited to, the following:

(1) Mount Rainier National Park;

(2) Crater Lake National Park;

(3) Yellowstone National Park;

(4) John D. Rockefeller, Jr. Memorial Parkway;

(5) Bering Land Bridge National Preserve;

(6) Gates of the Arctic National Park and Preserve;

(7) Katmai National Park;

(8) Aniakchak National Monument and Preserve;

(9) Wrangell-St. Elias National Park and Preserve;

(10) Lake Clark National Park and Preserve;

(11) Hot Springs National Park;

(12) Big Bend National Park (including that portion of the Rio Grande National Wild Scenic River within the boundaries of Big Bend National Park);

(13) Lassen Volcanic National Park;

(14) Hawaii Volcanoes National Park;

(15) Haleakala National Park;

(16) Lake Mead National Recreation Area; and

(17) Significant thermal features within National Park System Units which the Secretary may, after notice and public comment, add to the list of significant thermal features.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17366, May 16, 1988; 54 FR 13885, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3200.0–6 Use of surface.

(a) A lessee shall be entitled to use for the production, utilization, and conservation of geothermal resources only so much of the surface of the leased Federal lands as is deemed necessary for such purposes. The lessee shall have the right to use so much of the leased lands as may be deemed necessary for a power generation plant or a commercial or industrial facility, and may apply for the right to use so much of other Federal lands as may be deemed necessary for such purposes; however, any use of the leased lands or other Federal lands for a power generation plant or a commercial or industrial facility will be authorized only under a separate permit issued by the appropriate agency for that specific use and subject to all terms and conditions which it may include in that permit. The lessee shall not be entitled to use any mineral materials subject to the Materials Act except as provided by part 3600 of this title.

(b) Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these regulations nor shall operations under these regulations unreasonably interfere with or endanger operations under any lease, license, claim, permit, or other authorized use pursuant to the provisions of any other act.

[38 FR 35082, Dec. 21, 1973. Redesignated and amended at 53 FR 17366, May 16, 1988]

§ 3200.1 Competitive and noncompetitive leasing areas.

The authorized officer shall determine the boundaries of known geothermal resource areas. All lands within such boundaries shall only be leased competitively to the highest qualified bidder in accordance with part 3220 of this title. All other lands shall be leased noncompetitively, if at all, to the first qualified offeror in accordance with part 3210 of this title.

(a) In determining whether the geology of an area is of such a nature that the area should be designated as a KGRA, the authorized officer shall use such geologic and technical evidence as he/she deems appropriate, including the following:

(1) The existence of siliceous sinter and natural geysers;

(2) The temperature of fumaroles, thermal springs and mud volcanoes;

(3) The SiO_2 content of spring water;

(4) The Na/K ratio in spring waters or hot-water systems;

(5) The existence of volcanoes and calderas of late Tertiary or Quaternary age;

(6) Conductive heat flows and geothermal gradient;

(7) The porosity and the permeability of a potential reservoir;

(8) The results of electrical resistivity surveys;

(9) The results of magnetic, gravity and airborne infrared geophysical surveys; and

(10) The information obtained through other geophysical methods, such as microseismic, seismic ground noise, electromagnetic and telluric surveys if such methods prove to have significant use in evaluation.

(b) For purposes of KGRA classification, a *discovery* or *discoveries* shall be considered to be any well deemed by the authorized officer to be capable of producing geothermal resources in commercial quantities. Where the geological structure is not known, *nearby* shall be considered to be 5 miles or less from any such discovery. Lands nearby a discovery shall be classified as KGRA unless it is determined that the lands are on a different geological structure from the discovery. Where the authorized officer has determined the extent of a structure on which a discovery has been made, all lands in that structural area contributing geothermal resources to that discovery shall be deemed a KGRA regardless of the distance from the discovery.

(c) *Competitive interest* shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by the application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by another single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this paragraph.

[53 FR 17366, May 16, 1988; 53 FR 31956, Aug. 22, 1988]

§ 3200.2 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provided that in conveyances of title all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of use of such minerals shall be accomplished under the regulations of Group 3200 of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the

Federal Land Policy and Management Act of 1976 43 U.S.C. 1701 *et seq.*).

[53 FR 17367, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

Subpart 3201—Available Lands; Limitations; Unit Agreements

§ 3201.1 Lands subject to geothermal leasing.

§ 3201.1-1 General.

(a) The Secretary may issue a geothermal lease when he/she determines such issuance would be in the public interest;

(b) Subject to the exceptions listed below, geothermal leases may be issued in combination or separately for (1) lands administered by the Secretary of the Interior; (2) national forest lands or other lands administered by the Department of Agriculture through the Forest Service; and (3) geothermal resources in lands which have been conveyed by the United States subject to a reservation to the United States of geothermal resources.

(c) The authorized officer shall ensure that no lease is issued, extended, renewed, or modified which would result in a significant adverse effect on a significant thermal feature within a unit of the National Park System. If it is determined there is potential for an adverse effect, any lease issued, extended, renewed, or modified shall include stipulations required by law and otherwise deemed necessary to protect such features.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988; 54 FR 13885, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3201.1-2 Department of the Interior.

(a) Except as provided in this section, leases may be issued in accordance with the regulations in this part for withdrawn lands, for acquired lands, and for geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of the geothermal resources therein where such lands or resources are administered by the Secretary of the Interior.

(b) Notwithstanding any other provision in these regulations, geothermal leases shall not be issued for:

(1) Lands which the Secretary has identified or may identify as being necessary to the performance of his or any other Federal officer's authorized functions, and on which geothermal resource development would in his judgment interfere with such functions; or (2) lands respecting which the Secretary has made or may make a finding that the issuance of geothermal leases would be contrary to the public interest. Upon receipt of an application for a geothermal lease affecting lands withdrawn under section 3 of the Reclamation Act of 1902 (43 U.S.C. 416) or any other appropriate authority, notice thereof and an opportunity to comment thereon shall be given to the head of the agency for whose benefit the withdrawal was made. No geothermal lease affecting lands withdrawn for any agency outside the Department of the Interior shall be leased without the consent of the head of the agency for which the lands are withdrawn. Where leases are issued under part 3210 of this title or part 3220 for lands neighboring such reserved lands, the lessees shall be required to perform such lease operations and take such measures as are prescribed by the Secretary for the protection of the Federal interests therein.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988]

§ 3201.1-3 Department of Agriculture.

Leases for public, withdrawn or acquired lands administered by the Forest Service, may be issued by the Secretary of the Interior only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purpose for which they were withdrawn or acquired.

§ 3201.1-4 Federal Energy Regulatory Commission.

Leases for lands to which section 24 of the Federal Power Act, as amended (16 U.S.C. 818), is applicable, may be issued by the Secretary of the Interior only with the consent of, and subject to, such terms and conditions as the Federal Energy Regulatory Commission may prescribe to insure adequate utilization of such lands for power and related purposes.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988]

§ 3201.1-5 Patented lands.

Geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of geothermal resources therein may be leased under the regulations in this group subject to the provisions in this part and to such terms and conditions as may be prescribed by the authorized officer to insure adequate protection of the patented lands and any improvements thereon.

[38 FR 35082, Dec. 21, 1973, as amended at 48 FR 17044, Apr. 20, 1983]

§ 3201.1-6 Excepted areas.

Leases shall not be issued for lands which are:

(a) Administered under the National Park System;

(b) Within a national recreation area;

(c) In a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, or waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife which are designated as rare and endangered species by the Secretary; or under active consideration for inclusion in categories (a), (b), or (c) as evidenced by the filing of an application for a withdrawal or a proposed withdrawal;

(d) Tribally or individually owned Indian trust or restricted lands, within or without the boundaries of Indian reservations;

(e) Lands for which the Secretary determines that geothermal exploration, development, or utilization is reasonably likely to result in a significant adverse effect on a significant thermal feature within a unit of the National Park System;

(f) Lands within the Island Park Geothermal Area; or

(g) Lands subject to the leasing prohibition provided under Section 43 of the Mineral Leasing Act (30 U.S.C. 226-3) which include:

(1) Lands recommended for wilderness allocation by the surface managing agency;

(2) Lands within Bureau of Land Management wilderness study areas;

(3) Lands designated by Congress as wilderness study areas, except where leasing is specifically allowed to continue by the statute designating the study area; and

(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

[54 FR 13885, Apr. 6, 1989 and 55 FR 26441 June 28, 1990]

§ 3201.2 Acreage limitations.

(a) *Maximum holdings.* No citizen, association, corporation, or governmental unit shall take, hold, own, or control at one time, whether acquired directly from the Secretary or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding 51,200 acres, including leases acquired under the provisions of section 4(a)-(f) of the Act. Nor may any citizen, association, or corporation be permitted to convert mineral leases, permits, applications therefor, or mining claims, pursuant to the provisions of section 4(a)-(f) of the Act into geothermal leases for more than 10,240 acres.

(b) *Computation.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be that party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of that association or corporation. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage. Where the United States owns a present fractional interest in the geothermal resources in the leased lands, only that portion of the total acreage currently owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be chargeable as acreage holdings until the future interest vests in the United States.

(1) An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease.

(2) Lessees holding acreage in common shall be considered a single entity and cannot hold acreage in excess of the maximum specified in the law for any one lessee.

(c) *Excepted acreage.* Leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases subject to an operating, drilling or development contract approved by the Secretary pursuant to section 18 of the Act, other than communization or drilling agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(d) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contractions or elimination in which to reduce his holdings to the prescribed limitation.

(2) If any person holding or controlling leases or interests in leases is found to hold accountable acreage in violation of the provisions of this section and of the Act, the last lease or leases or interest or interests acquired by him which created the excess acreage holdings shall be canceled or forfeited in their entirety, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

[38 FR 35082, Dec. 21, 1973, as amended at 47 FR 5004, Feb. 3, 1982; 48 FR 17044, Apr. 20, 1983; 48 FR 24366, June 1, 1983; 50 FR 38813, Sept. 25, 1985]

§ 3201.3 Leases within unit areas.

Before issuance of a geothermal lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to perform his operations in a manner which the Supervisor deems to be consistent with the unit operations.

Subpart 3202—Qualifications of Lessees

§ 3202.1 Who may hold leases.

Leases may be issued only to: (a) Citizens of the United States who have reached the age of majority; (b) associations of such citizens; (c) corporations organized under the laws of the United States, any state or the District of Columbia; or (d) governmental units, including, without limitation, municipalities. The term "association" includes a partnership.

§ 3202.2 Proof of qualifications.

Submission of an executed lease application or offer, competitive bid or request for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance with the regulations of this group and the Act. Any party seeking to acquire or already holding a Federal geothermal lease or interest therein may be required by the authorized officer to submit proof that the party is qualified to hold a geothermal lease. Such proof shall be submitted within 30 days after receipt of request.

[48 FR 24368, June 1, 1983, as amended at 53 FR 17367, May 16, 1988]

§ 3202.2-1 Proof which may be required.

The authorized officer may require:

(a) Evidence that the lessee does not hold acreage in excess of that prescribed in § 3201.2 of this title. A lessee may be additionally required to submit the serial numbers and percent interest held in all leases as of a specified date.

(b) Evidence that the lessee or applicant is a citizen of the United States or, if a corporation or association, that the entity is in compliance with § 3202.1 of this title.

(c) Evidence that the individual executing an application, lease, or transfer of interest on behalf of another party is authorized to act in that capacity. In the case of a guardian or trustee, a copy of the authorizing court order or other legal instrument shall constitute such evidence.

(d) Evidence indicating whether the applicant or lessee is the sole party in interest and, if not, providing the names, addresses, and nature of interests of any other parties.

(e) Evidence showing that the municipality or governmental unit involved is authorized to hold geothermal leases. The evidence shall include a copy of the governing body's resolution authorizing the particular action being taken.

(f) Evidence setting forth the names and addresses of all members or stockholders controlling more than 10 percent of the corporation or association.

[48 FR 24368, June 1, 1983]

§ 3202.2-2 Attorney-in-fact/agent.

An attorney-in-fact or an agent may execute and file an application, offer, competitive bid or transfer of record title or of operating rights (sublease), request for approval of a transfer or other lease-related document.

[53 FR 17367, May 16, 1988]

§ 3202.2-3 Showing as to sole party in interest.

Each application must indicate whether the applicant is the sole party in interest. Where the applicant is not the sole party in interest, separate statements must be signed by each of the parties and by the applicant setting forth the nature of the agreement between them. All interested parties may be required to furnish evidence of their qualifications upon the written request of the authorized officer.

[38 FR 35082, Dec. 21, 1973. Redesignated and amended at 53 FR 17367, May 16, 1988]

§ 3202.2-4 Heirs and devisees (estates).

If an applicant or a successful bidder dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an application to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application filed by the deceased. If there are any minor heirs or devisees, the application can only be made by their legal guardian or trustee in his name.

[38 FR 35082, Dec. 21, 1973. Redesignated and amended at 53 FR 17367, May 16, 1988]

Subpart 3203—Leasing Terms

§ 3203.1 Primary term, additional term and extensions.

All geothermal leases, including primary term, additional term and extensions, shall be subject to § 3201.1-1(c) of this title. For those leases in effect upon enactment of the Geothermal Steam Act Amendments of 1988 (September 22, 1988), with expiration dates of September 22, 1988 through July

31, 1989, lessees shall be allowed until July 31, 1989, to submit the specified reports and/or applications required under §§ 3203.1-3 and 3203.1-4.

[54 FR 13886, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3203.1-1 Dating of leases.

All geothermal leases shall be considered issued when signed by the authorized officer. Geothermal leases, except future interest leases issued under Subpart 3207 of this title, shall be effective as to the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. A renewal lease shall be dated from the termination of the original lease.

[53 FR 17367, May 16, 1988]

§ 3203.1-2 Primary term.

All leases shall be for a primary term of 10 years.

§ 3203.1-3 Additional term.

(a) If geothermal resources are produced or utilized in commercial quantities within the primary term or any extended term of a lease, that lease shall continue for so long thereafter as geothermal resources are produced or utilized in commercial quantities or so long thereafter as the operator is making diligent efforts to commence production or utilization of geothermal resources in commercial quantities, but in no event shall the lease continue for more than 40 years after the end of the primary term. However, the lessee shall have a preferential right to renew the lease for an additional 40-year term subject to such terms and conditions as the authorized officer deems appropriate, if at the end of the first 40-year term the lands are not needed for another purpose and geothermal resources are being produced or utilized in commercial quantities.

(b) If a lease is not actually producing or utilizing geothermal resources at the end of its primary or extended term, but has a well capable of producing or utilizing geothermal resources in commercial quantities, the operator shall, at least 60 days prior to the anniversary date of the lease, provide the authorized officer a description of diligent efforts completed for the lease year and planned for the following year. Examples of information to be submitted include but are not limited to descriptions of negotiations for geothermal resources and/or electricity sales contracts, marketing arrangements, electrical generating and/or transmission agreements, and operations conducted or planned to better define the geothermal resource.

[38 FR 35082, Dec. 21, 1973, as amended at 54 FR 13886, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3203.1-4 Extensions.

(a) A lease which has been extended by reason of production, or on which geothermal steam has been produced, and which has been determined by the Secretary to be incapable of further commercial production and utilization of geothermal steam may be further extended so long as one or more valuable byproducts are produced in commercial quantities but for not more than 5 years.

(b) Any lease for land on which, or for which under an approved cooperative plan, communitization agreement, or a unit plan of development or operation, actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted at that time shall be extended for a period of 5 years. Any lease extended pursuant to this section shall subsequently be eligible for an extension under paragraph (c) of this section.

(c) Any lease from which geothermal resources have not been produced or utilized in commercial quantities by the end of the primary term, or by the end of an extension granted under paragraph (b) of this section, may be extended for successive 5-year periods totaling not more than 10 years. In order to obtain such extensions, the operator shall submit a request for lease extension to the authorized officer at least 60 days prior to the end of the primary term of the lease or prior to the end of any period of extension already granted. The request shall:

(1) Include a report documenting that the operator has made bona fide efforts to produce or utilize geothermal resources in commercial quantities given the current economic conditions for marketing geothermal steam including a description of:

(i) Operations conducted during the primary term of the lease and currently in progress to identify and define the geothermal resource on the lease including a summary of the results of those operations;

(ii) Actions taken in support of operations including obtaining permits, conducting environmental studies, meeting permit requirements or other related activities;

(iii) Actions taken during the primary term of the lease and currently in progress to negotiate marketing arrangements, sales contracts, drilling agreements, financing for electrical generation and transmission projects, or other related actions; and

(iv) Current economic factors and conditions which affect the lessee's efforts to produce or utilize geothermal resources in commercial quantities on the lease.

(2) Indicate whether the operator chooses to make payments in lieu of commercial quantities production or to make significant expenditures during the period of extension.

(i) If the operator elects to make payments in lieu of commercial quantities production and the extension is approved, the lease shall be modified to require that an annual payment in lieu of production be made in the amount specified by the authorized officer, but not less than $3.00 per acre or fraction thereof, of the lands under lease during an initial extension, or $6.00 per acre or fraction thereof for a subsequent extension. The actual payment per acre shall be fixed for the period of the extension and shall be made known to the operator, if requested, prior to the operator's petition for extension. Payments shall be made to the authorized officer at the same time as the lease rental is paid. Failure to make payment shall subject the lease to cancellation.

(ii) If the operator elects to make significant expenditures, and the extension is approved, the lease shall be modified to require the operator to make annual expenditures of at least $15.00 per acre or fraction thereof, of the lands under lease during an initial extension, or $18.00 per acre or fraction thereof during a subsequent extension. Expenditures made in excess of the minimum required shall be credited to subsequent years within the same period of extension. Expenditures which will qualify as significant expenditures shall be limited to those involving actual drilling operations on the lease, geochemical or geophysical surveys for exploratory or development wells, road or generating facility construction on the lease, architectural or engineering services procured for the design of generating facilities to be located on the lease, and environmental studies required by State or Federal law. To obtain credit towards meeting the significant expenditure requirement, the operator shall submit to the authorized officer a report of expenditures that qualify no later than 60 days after the end of the lease year in which the expenditures were made. Failure to make such expenditures shall subject the lease to cancellation.

(iii) The operator shall not be allowed to change election during a period of extension, but shall continue either to make payments in lieu of production or make significant expenditures until such time as a well is drilled that is capable of producing geothermal resources in commercial quantities. Within 30 days of receipt of a request for extension, the authorized officer will notify the operator whether the report has been approved or disapproved or will request additional information from the operator if necessary.

(d) Any lease on which there has been a suspension of operations or productions, or both, under § 3205.3-8 of this title shall continue in effect for the life of the suspension and, at the end of the suspension, shall be extended for a period equal to that portion of the primary term during which the suspension was in effect.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988; 54 FR 13886, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3203.1-5 Segregation of leases on commitment to, or contraction of, cooperative or unit plan or communitization or drilling agreement.

(a) Any lease committed to any cooperative plan, communitization agreement, drilling agreement, or unit plan, which covers lands within and lands outside the area covered by the plan or agreement, shall be segregated, as of the effective date of that plan or agreement, into separate leases, one covering the lands committed to that plan or agreement and the other as to the lands not so committed. The segregated lease covering the portion of the lands not subject to that plan or agreement shall not be entitled to an extension by reason of the segregation, but the term of the lease of such segregated lands shall be as provided in the original lease.

(b) When only part of the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the part of the lease which is excluded and the part which remains subject to the plan or agreement shall be segregated into separate leases. The term of the segregated lease composed of the excluded land shall not be extended because of production in commercial quantities or the existence of a producible well on the segregated lease remaining subject to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were at the time of contraction being conducted on that other lease, but the term of the lease composed of the excluded land shall be as provided in the original lease.

(c) Where all the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the term of the lease shall not be extended because of production in commercial quantities or the existence of a producible well on the lands remaining subject to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were being conducted on the other lands, but the term of the lease shall be as provided in the original lease.

(d) Contraction of a unit or cooperative plan or a communitization or drilling agreement causing all or part of the land in the lease to be excluded from such plan or agreement shall not serve to extend the term of such lease excluded by reason of the contraction where the 10-year primary term has already expired.

§ 3203.1-6 Conversion to mineral leases or mining claims.

(a) If the byproducts capable of being produced in commercial quantities are leasable under the Mineral Leasing Act of February 25, 1920 as amended and supplemented (30 U.S.C. sections 181-287), or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. sections 351-359), and the leasehold is primarily valuable for the production thereof, the lessee shall be entitled to convert his geothermal lease to a mineral lease under and subject to all the terms and conditions of the appropriate act, provided the lands and its resources are available for this purpose, upon application at any time before expiration of the lease extension by reason of byproduct production.

(b) The lessee shall be entitled to locate under the mining laws all minerals which are not leasable and which would constitute a byproduct if commercial production or utilization of geothermal steam continued. The lessee, to acquire the rights herein granted him, shall complete the location of mining claims within 90 days after the termination of the geothermal lease, provided the lands and its resources are available for location.

(c) Any lease converted under paragraph (a) or (b) of this section affecting lands withdrawn or acquired in aid of a function of a Federal department or agency, including the Department of the Interior, shall be subject to such additional terms and conditions as may be prescribed by that department or agency with respect to the additional operations or effects resulting from such conversion upon the utilization of the lands for the purpose for which they are administered.

§ 3203.2 Lease acreage limitation.

(a) A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width measured in cardinal directions. A lease offer may not exceed 2,560 acres except where the rule of approximation applies.

(b) No lease shall be issued for less than 640 acres, except at the discretion of the Secretary. The Secretary may issue a lease for less than 640 acres where geothermal resources will be utilized for non-electrical purposes.

(c) Where a departure is occasioned by an irregular subdivision, the leased acreage may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added.

(d) The authorized officer may add isolated tracts of more or less than 640 acres in nearby sections, to a lease application where it is determined that such addition is necessary for the proper management of the resource, provided the additional lands shall not cause the lessee to exceed the maximum acreage limitation as provided in § 3201.2(a) of this title. However, prior to the issuance of such a lease based on the application as amended by the authorized officer, the applicant shall be given the option to refuse such a lease. Failure of the applicant to execute and return the lease within 30 days after receipt thereof shall constitute a withdrawal of the application, as amended, without further notice.

[44 FR 12038, Mar. 5, 1979, as amended at 53 FR 17367, May 16, 1988]

§ 3203.3 Consolidation of leases.

Two or more contiguous leases issued to the same lessee may be consolidated if the total combined acreage does not exceed 2,560 acres. Except where a deacreage is caused by an irregular subdivision or subdivisions as stated in § 3203.2 of this title.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17368, May 16, 1988]

§ 3203.4 Description of lands.

Applications and nominations shall include a description of the lands sought to be included in a geothermal lease.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application or nomination shall describe the lands by legal subdivision, section, township, and range.

(b) *Unsurveyed lands.* If the lands have not been so surveyed, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys or to a prominent topographic feature. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(c) *Protracted surveys.* When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, each application or nomination for lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands according to the legal subdivision, section, township, and range shown on the approved protracted surveys.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Lou-*

isiana and in Alaska. In lease applications embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the applicant finds it impracticable to furnish a metes and bounds description, as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his application into the water a distance sufficient to permit complete enclosure of the water boundary of his application by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the application). The description in the lease application shall in all other respects conform to the requirements of paragraph (b) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the application. The applicant shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that application will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3201.2 of this chapter and the maximum or minimum area to be included in a lease pursuant to § 3203.2. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

§ 3203.5 Diligent exploration.

Each geothermal lease shall include provisions requiring diligent exploration until there is a well(s) capable of commerical production on the leased lands. Diligent exploration means postlease field operations, conducted by the operator, on or related to the leased lands. Diligent exploration operations include, but are not limited to, geochemical surveys, heat flow measurement, core drilling or test drilling of test wells. To qualify as diligent exploration, the results and associated expenditures of operation shall be submitted to the authorized officer in accordance with applicable regulations. In addition, to qualify after the fifth year of the lease, operations shall exceed minimum per acre expenditure in accordance with the following table:

Lease year	Expenditure per acre
6	$4
7	6
8	8
9	10
10–15	12

All expenditures qualifying as diligent exploration during the first 5 years of a lease, and all expenditures during any subsequent year in excess of the minimum requirement, shall be credited by the authorized officer against the requirement for successive years. However, in lieu of performing the minimum required diligent exploration in any lease year in which a minimum requirement is specified, the lessee may exercise the option of paying an additional rental of $3 per acre or fraction thereof. Failure to either pay the additional rental or complete the minimum required diligent exploration by the end of a lease year shall subject the lease to cancellation. However, leases extended under § 3203.1-4(c) shall not be required to perform diligent exploration.

[48 FR 17044, Apr. 20, 1983, as amended at 53 FR 17368, May 16, 1988; 54 FR 13887, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3203.6 Plans of development and operation.

No entry upon the leased lands for purposes other than casual use as defined in § 3209.0-5 of this title will be permitted until either a notice of intent or a plan of operation has been approved.

(a) The operator shall submit a notice of intent in accordance with § 3264.4 of this title prior to entry upon the lands for purposes of conducting exploration operations as defined in § 3209.0-5 of this title.

(b) The operator shall submit a plan of operation pursuant to § 3262.4 of this title, prior to entry upon the leased lands for purposes of drilling exploratory and development wells, including construction of testing and production facilities, except as provided in paragraph (a) of this section. Subsequent well operations shall be conducted under a modified or amended plan of operations as provided in § 3262.4-2 of this title.

[44 FR 12038, Mar. 5, 1979, as amended at 53 FR 17368, May 16, 1988]

§ 3203.7 Reservation to the United States of oil, hydrocarbon gas, and helium.

The United States reserves the ownership of and the right to extract oil, hydrocarbon gas, and helium from all geothermal steam and associated geothermal resources produced from lands leased under the Act. Whenever the right to extract oil, hydrocarbon gas, and helium, from geothermal steam and associated geothermal resources produced from such lands is exercised, it shall be exercised so as to cause no substantial interference with the production of geothermal resources from such lands.

[38 FR 35082, Dec. 21, 1973. Redesignated at 48 FR 17045, Apr. 20, 1983]

§ 3203.8 Compensation for drainage; compensatory royalty.

(a) Upon a determination by the authorized officer that lands owned by the United States are being drained of geothermal resources by wells drilled on adjacent or cornering lands, the authorized officer may execute agreements with the owners of adjacent or cornering lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any operating rights owner affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

(b) Where land in any lease is being drained of its geothermal resources by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United Sta
the operating rights owner shall d
and produce all wells necessary to p
tect the leased lands from drainage.
lieu of drilling such wells, the ope
ing rights owner may, with the c
sent of the authorized officer, p
compensatory royalty in the amou
determined in accordance w
§ 3262.3 of this title.

[38 FR 35082, Dec. 21, 1973. Redesignated
48 FR 17045, Apr. 20, 1983, and amended
53 FR 17368, May 16, 1988]

§ 3203.9 Readjustment of terms and cond tions.

(a)(1) Except as otherwise provide
by law, the terms and conditions o
any geothermal lease may be readjus
ed as determined by the authorized of
ficer at not less than 10-year interva
beginning 10 years after the date th
geothermal resource is produced an
utilized commercially for any purpo
including the generation of electricit

(2) At such time as the geotherma
resource is being commercially pr
duced, the authorized officer sha
give notice to the lessee, by written de
cision, of any proposed readjustmen
of the terms and conditions of th
lease and the nature thereof, an
unless the lessee files with the autho
ized officer an objection to the pr
posed terms and conditions or reli
quishes the lease within 30 days afte
receipt of such notice, the lessee sha
be deemed conclusively to have agree
to such terms and conditions. If th
lessee files objections, and agreeme
cannot be reached between the a
thorized officer and the lessee withi
a period of 60 days, the lease may b
terminated by either party, subject t
the provisions of § 3000.4 of this cha
ter. If the lessee files objections to th
proposed readjusted terms and cond
tions, the existing terms and cond
tions will remain in effect until the
has been an agreement between th
authorized officer and the lessee o
the new terms and conditions to be a
plied to the lease or until the lease i
terminated. The readjustment of an
terms concerning rental and royalt
rates will be subject to § 3205.3 of th
chapter.

(b) Any readjustment of the terms and conditions of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency may be made only with the approval of that other agency.

[44 FR 12038, Mar. 5, 1979. Redesignated at 48 FR 17045, Apr. 20, 1983]

Subpart 3204—Surface Management Requirements; Special Requirements

§ 3204.1 General.

A lessee shall comply with all of the standard lease terms and conditions, any special lease stipulations added by the authorized officer and all Geothermal Resource Operational Orders issued pursuant to 43 CFR 3261.2.

[48 FR 17045, Apr. 20, 1983]

Subpart 3205—Fees, Rentals and Royalties

§ 3205.1 Payments.

§ 3205.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—the Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

[49 FR 11637, Mar. 27, 1984]

§ 3205.1-2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year advance rentals and bonuses for leases issued under Group 3200 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases shall be paid to the Service.

(b) All royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all royalty payments under easements for directional drilling are to be paid to the Service.

[49 FR 11637, Mar. 27, 1984, as amended at 49 FR 39330, Oct. 5, 1984; 53 FR 17368, May 16, 1988]

§ 3205.2 Filing fees.

(a) No filing fee is required for competitive lease applications.

(b) Applications for noncompetitive leases, including future interest leases, shall be accompanied by a nonrefundable filing fee of $75 for each application.

(c) Applications for approval of a transfer of a lease or any interest therein shall be accompanied by a nonrefundable filing fee of $50 for each separate transfer.

(d) No filing fee is required for requests or nominations for parcels to be offered for competitive sale.

[53 FR 17368, May 16, 1988]

§ 3205.3 Rentals and royalties.

§ 3205.3-1 Payment with application.

Each application shall be accompanied by payment of the first-year's advance rental of $1 per acre or fraction thereof based on the total acreage included in the application, except that no advance rental payment is required with an application for a future interest. An application accompanied by a payment of the first-year's advance rental which is deficient by not more than 10 percent shall be accepted by the authorized officer provided all other requirements are met, but if the additional rental is not paid within 30 days after receipt of notice the application shall be rejected or the lease, if issued, will be cancelled. If the annual rental established for the lease to be issued is more than $1 per acre or fraction thereof, the applicant shall submit the additional rental due within 30 days after receipt of notice or the application shall be rejected.

[38 FR 35082, Dec. 21, 1973, as amended at 48 FR 6337, Feb. 14, 1983; 48 FR 17045, Apr. 20, 1983; 53 FR 17368, May 16, 1988]

§ 3205.3-2 Payment of annual rental.

(a) Annual rental in the amount specified in the lease which shall be not less than $1 per acre or fraction thereof must be paid in advance and must be received by the designated Service office on or before the anniversary date of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law, except as provided by § 3244.2 of this title.

(b) If, on the anniversary date of the lease, less than a full year remains in the lease term, the rentals shall be payable in the same proportion as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional month remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(c) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the 1st day of the first month following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation. However, if the anniversary date occurs before the end of the notice period, the rental for the following lease year shall nevertheless be due on the anniversary date and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law except as provided by § 3244.2 of this title. The lessee shall not be relieved of liability for rental due for the balance of the previous lease year.

(d) If the payment is due on a day in which the designated Service office is closed, payment received on the next official working day shall be deemed to be made on time.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17368, May 16, 1988]

§ 3205.3-3 [Reserved]

§ 3205.3-4 Fractional interests.

Rentals and minimum royalties payable under leases for lands in which the United States owns only an undivided present or future fractional interest shall not be prorated, but shall be paid for the full acreage in the leased lands. However, royalty on production from such lands shall be payable in the same proportion to the royalty provided for in § 3205.3-5 of this title as the undivided fractional interest of the United States in the geothermal resources is to the full geothermal resources interest.

[47 FR 5004, Feb. 3, 1982]

§ 3205.3-5 Royalty on production.

Royalty shall be paid at the following rates on geothermal resources:

(a) A rate, as set forth in the lease, of not less than 10 per centum and not more than 15 per centum of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee;

(b) A rate as set forth in the lease, of not more than 5 per centum of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that as to any byproduct which is a mineral named in section 1 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181), the rate of royalty for such mineral shall be the same as that provided in that Act and the maximum rate of royalty for such mineral shall not exceed the maximum royalty applicable under that Act;

(c) In no event shall the royalty on any producing lease for any lease year, commencing with the lease year beginning on or after the commencement of production in commercial quantities, be less than $2 per acre or fraction thereof, and this minimum royalty, in lieu of rental, shall be payable at the expiration of each lease year.

§ 3205.3–6 Royalty on commercially demineralized water.

All geothermal leases issued pursuant to the provisions of this group shall provide for the payment to the lessor of a royalty on commercially demineralized water at a rate to be specified in the lease of not more than 5 per centum of the value of such commercially demineralized water that has been sold or utilized by the lessee or is reasonably susceptible of sale or utilization by the lessee, except that no payment of a royalty will be required on such water if it is used in plant operation for cooling or in the generation of electric energy or otherwise.

§ 3205.3–7 Waiver, suspension or reduction of rental or royalty.

(a) The authorized officer may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms. No waiver, suspension or reduction of rental or royalty will be granted where the only reason for the request for such relief is the unavailability of power generating facilities to utilize the geothermal steam.

(b) An application hereunder shall be filed with the authorized officer and shall:

(1) Contain the serial number of the leases and the names of the lessee and operator; (2) show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of production subject to royalty computed in accordance with the operating regulations, the number of wells counted as producing each month, and the average production per well per day; (3) contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any leased products and all facts tending to show whether the wells can be successfully operated using the royalty or rental fixed in the lease; and (4) where the application is for a reduction in royalty, furnish full information as to whether royalties or payments out of production are paid to others than to the United States, the amounts so paid, and the efforts made to reduce them. The applicant must also file agreements of the holders to a comparable reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17368, May 16, 1988]

§ 3205.3–8 Suspension of operations and production or suspension of operations.

(a) A suspension of all operations and production on a producing lease may, upon application by the operating rights owner, be consented to by the authorized officer, including cases where the operator is prevented from continuing production, despite the exercise of due care and diligence, by matters beyond the operator's reasonable control. Applications for suspensions of all operations and production shall be filed in the proper BLM office. Complete information showing the necessity for such relief shall be furnished.

(b) The authorized officer may, in the interest of conservation, direct the suspension of operations on any lease.

(c) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(d) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer and shall last for the period specified in the order or approval, except as provided in paragraphs (f) and (g) of this section.

(e) Rental or minimum royalty payments shall be suspended during any period of suspension directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension becomes effective or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental or minimum royalty payments shall resume on the first day of the lease month in which the suspension is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

(f) Where operations only or all operations and production have been suspended on a lease and the authorized officer approves resumption of operations only or all operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental or minimum royalty payments, as provided in paragraph (e) of this section.

(g) Whenever it appears from information obtained by or furnished to the authorized officer that the interest of the lessor requires additional drilling or producing operations, he/she may, by written notice, order the beginning or resumption of such operations.

(h) The relief authorized under this section also may be obtained for any leases included within an approval unit or cooperative plan or development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

[53 FR 17368, May 16, 1988]

§ 3205.3–9 Readjustments.

The rentals and royalties of any geothermal lease may be readjusted at not less than 20-year intervals beginning 35 years after the date geothermal steam is produced as determined by the authorized officer. In the event of any such readjustment neither the rental nor royalty paid during the preceding period shall be increased by more than 50 per centum, and in no event shall the royalty payable exceed 22½ per centum. Each geothermal lease shall provide for such readjustment. The authorized officer shall give notice of any proposed readjustment of rental or royalties. Unless the lessee relinquishes the lease within 30 days after receipt of such notice, he shall conclusively be deemed to have agreed to such terms and conditions. If the lessee files a protest, and no agreement can be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this title. If the lessee files a protest to the proposed readjusted terms and conditions, the existing terms and conditions shall remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated, except payments of any proposed readjusted rentals and royalties shall be paid in the timely manner prescribed in these regulations and may be paid under protest. The readjusted terms and conditions shall be effective as of the end of the term being adjusted.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988]

§ 3205.4 Rental and minimum royalty liability of lands committed to cooperative or unit plans.

§ 3205.4–1 Prior to production.

All lands within any lease committed to an approved cooperative or unit plan shall at all times prior to production on any of the lands so committed remain subject to rental in accordance with § 3205.3 of this title.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988]

§ 3205.4–2 After production.

As soon as production is obtained on or for any lands included in an approved cooperative or unit plan those lands which are included within the participating area of the producing well shall become liable for royalties in accordance with subpart 3205 of this title. All other unitized lands shall remain subject to rental in accordance with § 3205.3 of this title.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988]

Subpart 3206—Lease Bonds

§ 3206.1 Bond obligations and filing.

§ 3206.1-1 Bond obligations.

(a) A surety of personal bond conditioned upon compliance with the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to commencement of drilling operations.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

(1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly state on its face the Secretarial approval is required prior to redemption of the certificate of deposit by any party;

(2) Cashier's check;

(3) Certified check;

(4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or

(5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case of default in the performance of the terms and conditions of a lease. Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its terms. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

[53 FR 22847, June 17, 1988; 53 FR 31958, Aug. 22, 1988]

§ 3206.1-2 Filing.

A single originally executed copy of a bond on the appropriate form approved by the Director shall be filed in the proper BLM office. Nationwide bonds may be filed in any Bureau State office (see § 1821.2-1).

[53 FR 17369, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

§ 3206.2 Lease bond.

A lease bond may be posted by a lessee, operating rights owner (sublessee), or operator, in an amount of not less than $10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her name as principal, or in the name of the lessee or sublessee, provided that lessee or sublessee and surety consent is provided.

[53 FR 17369, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§ 3206.3 Liability.

Where a bond is furnished by an operating rights owner (sublessee) or operator, the Secretary may bring suit thereon without joining the lessee if he/she is not a party to the bond.

[53 FR 17369, May 16, 1988]

§ 3206.4 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than $50,000 for full statewide coverage for all geothermal leases in the applicable State.

[53 FR 22847, June 17, 1988]

§ 3206.5 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner [sublessee], or operator may furnish a bond in an amount of not less than $150,000 for full nationwide coverage for all geothermal leases.

[53 FR 22847, June 17, 1988]

§ 3206.6 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3206.1-1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3286.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

[53 FR 22848, June 17, 1988]

§ 3206.7 Default.

§ 3206.7-1 Payment by surety.

Where upon a default the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3206.7-2 Penalty.

Thereafter, upon penalty of cancellation of all of the leases covered by that bond, the principal shall post a new nationwide bond in the amount of $150,000 or a new statewide bond in the amount of $50,000 as the case may be, within 6 months after notice, or within such shorter period as the authorized officer may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3206.8 Applicability of provisions to existing bonds.

The provisions of these regulations may be made applicable to any oil and gas nationwide or statewide bond by filing in the proper BLM office a written consent to that effect and an agreement to be bound by the provisions of this section executed by the principal and surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of these regulations.

[38 FR 35082, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983]

§ 3206.9 Termination of period of liability.

The period of liability of any lease shall not terminate until all lease terms and conditions have been fulfilled.

[53 FR 17369, May 16, 1988]

Subpart 3207—Leases for a Fractional or Future Interest

Source: 47 FR 5004, Feb. 3, 1982, unless otherwise noted.

§ 3207.1 General.

Leases for lands in which the United States owns only a fractional or future interest in geothermal resources may be issued whenever the public interest will be best served thereby. Where the United States owns both a present and a future interest in the geothermal resources in a tract, these interests may be leased separately or together at the discretion of the authorized officer.

§ 3207.2 Noncompetitive leases.

§ 3207.2-1 Qualifications.

Qualifications for noncompetitive lease applicants for either a fractional present or future interest in geothermal resources will be the same as those appearing in subpart 3202 of this title with the exception that applicants for a lease of a noncompetitive future interest shall own, hold, or control at least 50 percent of the present operating rights in the geothermal resources.

§ 3207.2-2 Applications.

Applications for a noncompetitive lease for either a fractional present or future interest in geothermal resources owned by the United States shall be filed and adjudicated in accordance with subpart 3210 of this title except for qualifications in § 3207.2-1 of this title. In addition, such applications shall include:

(a) A statement describing the extent of the applicant's present or future operating rights to the geothermal resources in a tract other than those resources owned by the United States in the lands covered by the application, together with:

(1) A certified abstract of title or certificate of title containing record evidence of the creation of such interest(s) in the geothermal resources (abstracts will be returned to the applicant when final action has been taken on the application), and

(2) A copy of the lease or contract if the applicant has acquired any of the operating rights to the described interest(s).

(b) The name of the Government agency administering the surface lands that must consent before a lease can be issued; or

(c) The name of the agency that may have records establishing ownership of the geothermal resources involved; and

(d) Identification of the project, if any, of which the lands are a part.

§ 3207.2-3 Leasing.

(a) A lease of a fractional present interest shall contain the same terms and conditions, including the rentals, as are included in leases for lands in which the United States owns the full interest in the geothermal resources. The acreage of the lease shall be chargeable according to § 3201.2 of this title.

(b) A lease of a future Federal geothermal interest shall become effective on the date that the interest in the geothermal resources vests in the United States. The terms and conditions of the lease shall be the same as for a noncompetitive lease of a present interest issued under this part. The acreage in the lease shall become chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a noncompetitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(d) The authorized officer shall not:

(1) Issue leases requiring consent of a Government agency until the applicant executes stipulations required by the consenting agency.

(2) Issue a lease for the Federal interests in the geothermal resources on a parcel to a person who, with the Federal interest, would control less than 50 percent of all interest in the operating rights to the geothermal resources in a parcel, unless the Secre-

tary determines it is in the public interest to do so.

[47 FR 5004, Feb. 3, 1982, as amended at 53 FR 17369, May 16, 1988]

§ 3207.2-4 Agency action on applications. [Reserved]

§ 3207.3 Competitive leasing.

§ 3207.3-1 Nominations for leases.

No special form is required for requests or nominations of eligible parcels. Nominations or requests to have leases offered competitively for lands known to contain geothermal resources shall, to the extent possible, include the information required for noncompetitive leases under § 3207.2-2 of this title.

§ 3207.3-2 Leasing.

(a) Fractional or future interests in geothermal resources owned by the United States in lands situated within a KGRA shall only be available for leasing under the provisions of this subpart and the provisions of subpart 3220 of this title.

(b) A lease of a future interest will become effective on the date that the interest in the geothermal resources vests in the United States. Its terms and conditions, including rental and royalty payments, shall be the same as for a lease of a present interest issued competitively under subpart 3220 of this title. The acreage in the lease shall become chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a competitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lesse present lease interests are reli quished, canceled, terminated, or e pired, the future interest lease righ with the United States also shall cea and terminate to the same extent.

(d) If the controlling owner (holder of the present rights in an o fered tract, is not the high bidder a the lease sale, such party shall b given an opportunity to meet th highest bona fide bid submitted fo the tract. Failure to do so within the time allowed, or failure to submit any bid for the offered tract, shall be considered a waiver of all rights to the competitive lease and the lease shall be awarded to the highest qualified bidder. In the event there are two or more holders of a present interest in an offered tract who have equal rights and are willing to meet the highest bona fide bid on the offered tract, the right to meet the highest bona fide bid shall be determined by a drawing conducted by the authorized officer within 30 days after the bids are opened. These provisions are in addition to the provisions under § 3220.6 of this title.

(e) The authorized officer shall not issue leases requiring consent of a Government agency until the highest bona fide bidder executes stipulations required by the consenting agency.

[47 FR 5004, Feb. 3, 1982, as amended at 53 FR 17369, May 16, 1988]

Subpart 3208—[Reserved]

Subpart 3209—Geothermal Resources Exploration Operations

§ 3209.0-1 Purposes.

(a) The regulations in this subpart establish procedures to be followed in conducting exploration operations on unleased public lands, the surface of which is administered by the Bureau, and on lands under a Federal lease for geothermal resources by the lessee. At the request of any other surface managing agency, the procedures in this part may be applied on a case by case basis to unleased public lands administered by such agency.

(b) The rights obtained under this subpart do not include an exclusive right to prospect for geothermal resources on the land described in a Notice of Intent or any preference right to a geothermal resources lease.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988; 53 FR 31867, Aug. 22, 1988]

§ 3209.0-2 Objectives.

The regulations in this subpart encourage exploration of the public lands for geothermal resources in a manner that is consistent with the management policy set forth in § 1725.3 of this chapter. No exploration operations will be allowed if the authorized officer determines that such operations would be inconsistent with that policy. The authorized officer may suspend or terminate exploration operations upon due notice to the operator at any time if he determines that there is non-compliance with the terms and conditions of the Notice of Intent.

§ 3209.0-5 Definitions.

As used in this subpart:

(a) *Exploration operations* means any activity relating to the search for evidence of geothermal resources which requires physical presence upon public lands and which may result in damage to public lands or resources thereon. It includes, but is not limited to, geophysical operations, drilling of shallow temperature gradient wells, construction of roads and trails, and cross-country transit by vehicle over public lands. It does not include the casual use of public lands for geothermal resources exploration. It does not include core drilling for subsurface geologic information, except drilling of shallow temperature gradient wells, or drilling for geothermal resources; these activities will be authorized only by the issuance of a geothermal resources lease. The regulations in this subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges for seismic exploration, nor do they affect the exclusive right of a lessee to drill for geothermal resources upon the land subject to his lease.

(b) *Notice of Intent* means a *Notice of Intent and Permit to Conduct Exploration Operations (Geothermal Resources).*

(c) *Casual use* means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources, and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are *casual use.*

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17370, May 16, 1988]

§ 3209.1 Notice of intent and permit to conduct exploration operations (geothermal resources).

§ 3209.1-1 Application.

(a) *Forms and where filed.* Any persons desiring to conduct exploration operations under the regulations of this subpart shall, prior to entry upon the lands, file for approval with the authorized officer for the district in which the public lands are located a Notice of Intent on a form approved by the Director.

(b) *Requirements.* The Notice of Intent will contain the following:

(1) The name and address, including zip code, both of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities;

(2) A statement that the signers agree that exploration operations will be conducted pursuant to the terms and conditions listed on the approved form;

(3) A brief description of the type of operations which will be undertaken;

(4) A description of the lands to be explored by township;

(5) A map or maps, available from state or Federal sources, showing the lands to be entered or disturbed by the proposed exploration operations; and

(6) The approximate dates of the commencement and termination of exploration operations.

§ 3209.1-2 Review of Notice of Intent.

The authorized officer will either approve or disapprove a Notice of Intent as promptly as practicable, but in any event within 30 calendar days after the date of the filing of the Notice of Intent. If the authorized officer shall disapprove a Notice of Intent, he shall explain in writing to the applicant the reasons for disapproval.

§ 3209.2 Exploration operations.

No exploration operations will be conducted on public lands except pursuant to the terms of a Notice of Intent which has been approved by the authorized officer.

§ 3209.3 Completion of operations.

Upon completion of the exploratory operations, there shall be filed with the authorized officer a *Notice of Completion of Exploration Operations.* Within 90 days after the filing of such *Notice of Completion,* the authorized officer shall notify the party who had conducted the operations whether all the terms and conditions set out by the regulations in this subpart and in the Notice of Intent have been met, or whether additional measures shall be taken to correct any unacceptable damage to the lands, specifying the nature and extent of such measures.

[38 FR 35082, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983]

§ 3209.4 Bond requirement.

§ 3209.4-1 General.

(a) Simultaneously with the filing of the Notice of Intent, and before the entry is made on the land, the party or parties filing the Notice of Intent must file with the authorized officer a surety company bond for each exploration operation in the amount of not less than $5,000, conditioned upon the full and faithful compliance with all of the terms and conditions of the regulations in this subpart and of that Notice of Intent.

(b) A party shall be excused from compliance with the requirements of paragraph (a) of this section if he/she possesses either a nationwide bond in the amount of not less than $50,000 covering all exploration operations, or a statewide bond in the amount of not less than $25,000 covering all exploration operations in the state in which
the lands on which he/she has fi
the Notice of Intent are situated, o
lease bond of not less than $10,000 f
nished in accordance with § 3206.2
this title.

[38 FR 35082, Dec. 21, 1973, as amended
53 FR 17370, May 16, 1988]

§ 3209.4-2 Riders to existing bond form

Holders of nationwide and statewi
oil and gas exploration bonds shall
permitted, in lieu of furnishing add
tional bonds, to amend their bonds
include geothermal resources explor
tion operations.

§ 3209.4-3 Termination of period of liabi ity.

The authorized officer will not giv
his consent to the cancellation of th
bond if an individual bond was submit
ted or to the termination of the perio
of liability if a State or nationwid
bond was submitted, unless and unti
there has been compliance with all o
the terms and conditions of the Notic
of Intent. Should the authorized offi
cer fail to notify the party within 9
days from the filing of *Notice of Com
pletion* that all terms and condition
have been complied with or that addi
tional corrective measures must b
taken to rehabilitate the land, th
period of liability under an individua
bond or the period of liability for
particular exploration operation unde
a State or nationwide bond shall auto
matically terminate on the 91st day.

PART 3210—NONCOMPETITIVE LEASES

Subpart 3210—Noncompetitive Leases: General

Sec.
3210.1 Availability of land.
3210.2-1 Application.
3210.2-2 Submission of applications.
3210.2-3 Withdrawal of application.
3210.2-4 Amendment to lease.
3210.3 Determination of priorities.
3210.4 Rejections.

AUTHORITY: The Geothermal Steam Ac
of 1970, as amended (30 U.S.C. 1001-1025).

SOURCE: 38 FR 35093, Dec. 21, 1973, unles
otherwise noted.

Subpart 3210—Noncompetitive Leases: General

§ 3210.1 Availability of land.

(a) All lands subject to leasing that are not within a KGRA shall be available for lease application under the provisions of this subpart.

(b) For those particular lands included in canceled, relinquished, expired, or terminated leases, the BLM State Office having jurisdiction shall post a description of such lands on the first working day of a calendar month. Such lands shall then be available for lease applications beginning on the first working day of the calendar month following posting. Applications received prior to the first working day of the month following posting shall be considered filed on that date.

[48 FR 6337, Feb. 14, 1983]

§ 3210.2-1 Application.

An application for a lease shall be filed in an original and 2 copies in the proper BLM office on a form approved by the Director. The original form, or a copy thereof, filled in by typewriter or printed plainly in ink, manually signed in ink and dated by the offeror, or the offeror's duly authorized agent or attorney-in-fact, shall be required. Copies shall be an exact reproduction on 1 page of both sides of the approved form without additions, omissions or other changes or advertising. The application shall be submitted in a sealed envelope marked *Application for lease pursuant to 43 CFR part 3210.* The application shall include a complete and accurate description of the lands applied for, which shall include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed nor protracted and are described by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted. The description of lands in an existing lease shall be conformed to a subsequent resurvey or amended protraction survey, whichever is appropriate.

[53 FR 17370, May 16, 1988]

§ 3210.2-2 Submission of applications.

Applications for leases under this subpart shall be submitted only during application filing periods. An application filing period shall begin on the first working day of each calendar month and shall end at the close of business on the last working day of that month. No applicant shall file during the same application filing period a second application which overlaps any of the land covered by his first application. When an application is filed with the authorized officer, the date of filing shall be stamped on the envelope. The envelope containing the application shall remain sealed until the end of the application filing period during which the application is filed. On the first working day following the end of the application filing period all applications shall be opened, and it will be determined which applications are for lands included in a KGRA. In determining whether land included in an application is a KGRA because of competitive interest, no application submitted during any subsequent application filing period will be considered. Applications for land determined to be KGRA will be rejected. All other applications will be assigned priority according to the date of filing. If any application covers both land within a KGRA and land outside a KGRA, the applicant will be granted the opportunity to amend his application to exclude the portion included in a KGRA, and his amended application will be assigned priority according to the date of filing of his original application, but must comply with all other requirements of these regulations.

[38 FR 35093, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983]

§ 3210.2-3 Withdrawal of application.

An application may not be withdrawn, either in whole or in part, unless the request is received by the proper BLM office before the lease or an amendment of the lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States even though the effective date of the lease is subsequent to the date of filing of the withdrawal, except where a separate conflicting lease has been signed on behalf of the United States covering the land described in the withdrawal.

§ 3210.2-4 Amendment to lease.

If any of the land applied for was open to filing when the application was filed but is omitted from the lease for any reason and thereafter becomes available for noncompetitive leasing, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the lessee's application with respect to such land or such omitted lands have been determined to be within a KGRA. The lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued.

§ 3210.3 Determination of priorities.

(a) No lease shall be issued before final action has been taken on (1) any prior application to lease the land, (2) any subsequent application to lease the land that is based upon a claimed preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land.

(b) Where a lease is issued before final action has been taken on such applications and petitions, it shall be canceled, and the advance rental returned, after due notice to the lessee, where the applicant or petitioner is found to be qualified and entitled to receive a lease of the land.

(c) Applications for lease received in the mail or delivered on the same day will be deemed to have been simultaneously filed, and the right of priority and the order of processing will be determined by a public drawing.

(d) Prior to the issuance of any lease, a determination shall be made as to whether or not the lands are within a KGRA. Applications for lands determined to be within any KGRA will be rejected.

§ 3210.4 Rejections.

If, after the filing of an application for a noncompetitive lease and before the issuance of a lease, or amendment thereto, pursuant to that application, the land embraced in the application becomes included within a KGRA, the application will be rejected as to such KGRA lands. The authorized officer retains discretion to reject an application for a noncompetitive lease even though the tract for which application is made is not determined to be within a KGRA.

PART 3220—COMPETITIVE LEASES

NOTE: The information collection requirements contained in part 3220 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0074. The information is being collected to allow the authorized officer to determine the qualified bidder of the highest bonus bid for a competitive lease parcel. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

(See 48 FR 24368, June 1, 1983)

Subpart 3220—Competitive Leases: General

Sec.
3220.1 General.
3220.2 Notice of lease sale.
3220.2-1 Contents of notice.
3220.2-2 Detailed statement.
3220.3 Publication of the notice.
3220.4 Bidding requirements.
3220.5 Award of lease.

AUTHORITY: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Subpart 3220—Competitive Leases; General

§ 3220.1 General.

(a) Lands within a KGRA, except as provided under § 3201.1 of this chapter, will be available for leasing on the effective date of these regulations.

(b) The authorized officer will accept nominations to lease, or may on his own motion from time to time call for nominations to lease. Nominations may be withdrawn at any time.

[38 FR 35094, Dec. 21, 1973]

§ 3220.2 Notice of lease sale.

§ 3220.2-1 Contents of notice.

The notice of lease sale shall state the time, date and place of the sale, shall include a general description of the lands offered for sale and information on where the detailed statement of the precise description and terms and conditions of the lease(s), including rental and royalty rates, as well as the form on which a bid(s) shall be submitted and where that form may be obtained. Remittances for competitive bids shall be submitted as required in the detailed statement of sale notice.

[53 FR 17370, May 16, 1988]

§ 3220.2-2 Detailed statement.

The detailed statement shall contain information on when and where to submit bids, bidding requirements, required payments, lease terms and conditions, the description of the leasing units being offered and any other information that may be helpful to the prospective bidder.

[53 FR 17370, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§ 3220.3 Publication of the notice.

The notice of lease sale shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated or in such other publications as the authorized officer may determine appropriate. The successful bidder shall, prior to lease issuance, pay his/her proportionate share of the total cost of publication of the notice.

[53 FR 17370, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

§ 3220.4 Bidding requirements.

(a) A separate identified sealed bid shall be submitted for each lease unit. Each bidder shall submit with the bid a certified or cashier's check, bank draft, money order, or cash in the amount of one-fifth of the amount bid. Execution and submission of a bid as prescribed in the detailed statement of lease sale constitutes certification of compliance with subpart 3202 of this title. Proof of qualifications to hold a lease shall be furnished upon the written request of the authorized officer in accordance with § 3202.2 of this title.

(b) All bidders are warned against violation of the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) If the lease is terminated by relinquishment, or for failure to make timely payment of annual rentals or for any other reason, any unpaid installments of the bonus bid shall be immediately due and payable to the lessor.

[44 FR 12039, Mar. 5, 1979. Redesignated at 48 FR 24369, June 1, 1983, and amended at 53 FR 17370, May 16, 1988]

§ 3220.5 Award of lease.

(a) All sealed bids shall be opened at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.

(b) In the event that the Secretary determines to issue a lease, that lease shall be awarded to the highest responsible qualified bidder. High bids determined to be inadequate by the authorized officer shall be rejected.

(c) If the authorized officer cannot issue a decision to accept or reject the high bid within 30 days, the high bidder shall be notified and informed in writing of the reason for the delay and when a decision is expected.

(d) The right to reject any and all bids is reserved by the Secretary. If the high bid is rejected or is determined by the authorized officer to not be in compliance with the requirements set out in the detailed statement or the award notice, the bonus bid submitted with the bid shall be refunded; and

(e) If the lease is awarded, 3 copies of the lease shall be sent to the successful bidder who shall, within 15 days of receipt of notice, sign and return the lease forms together with payment of the balance of the bonus bid, the first year's rental and the bidder's proportionate share of the notice of lease sale pubication costs. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed by the authorized officer and a copy will be mailed to the lessee.

(f) If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, the deposit will be forfeited and disposed of as provided in section 20 of the Act. In this event, the lands may be reoffered when it is determined, in the opinion of the authorized officer, that sufficient interest exists to justify a competitive lease sale.

[44 FR 12039, Mar. 5, 1979, as amended at 48 FR 17045, Apr. 20, 1983. Redesignated at 48 FR 24369, June 1, 1983, and amended at 53 FR 17370, May 16, 1988]

PART 3240—RULES GOVERNING LEASES

Note: The information collection requirements contained in part 3240 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0074. The information being collected to allow the authorized officer to determine if parties obtaining an interest in a lease are qualified to hold such interest. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

(See 48 FR 24368, June 1, 1983)

Subpart 3240—Rules Governing Leases [Reserved]

Subpart 3241—Transfers

Sec.

3241.1 Transfers, interests, and qualifications.
3241.1-1 Transfers of record title.
3241.1-2 Transfers of operating rights.
3241.2 Requirements for filing of transfers.
3241.2-1 Place of filing and filing fee.
3241.2-2 Time of filing transfers.
3241.2-3 Forms and number of copies required.
3241.2-4 Description of lands.
3241.3 Bonds.
3241.4 Approval.
3241.5 Continuing responsibility.
3241.6 Production payments.
3241.7 Overriding royalty interests.
3241.7-1 General.
3241.7-2 Limitation of overriding royalties.
3241.8 Lease account status.
3241.9 Effect of transfer.

Subpart 3242—Production and Use of Byproducts

3242.1 General.
3242.2 Production and use of commercially demineralized water as a byproduct; production and use of other sources of water.
3242.2-1 General.
3242.2-2 Prohibition on production of commercially demineralized water.
3242.2-3 Water wells on geothermal areas.
3242.2-4 State water laws.

Subpart 3243—Cooperative Conservation Provisions

3243.1 Cooperative or unit plans.
3243.2 Acreage chargeability.
3243.3 Communitization or drilling agreements.
3243.3-1 Approval.
3243.3-2 Requirements.
3243.4 Operating, drilling, development contracts or a combination for joint operations.
3243.4-1 Approval.
3243.4-2 Requirements.
3243.4-3 Acreage chargeability.

Subpart 3244—Terminations and Expirations

3244.1 Relinquishments.
3244.2 Automatic terminations and reinstatements.
3244.2-1 General.
3244.2-2 Exceptions.
3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.
3244.4 Expiration by operation of law.
3244.5 Removal of materials and supplies upon termination of lease.

Authority: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Source: 38 FR 35097, Dec. 21, 1973, unless otherwise noted.

Subpart 3240—Rules Governing Leases [Reserved]

Subpart 3241—Transfers

§ 3241.1 Transfers, interests and qualifications.

§ 3241.1-1 Transfers of record title.

The record title of leases may be assigned as to all or part of the leased acreage, except that no assignment shall be approved where (a) either the assigned or retained portions created by the assignment would be less than 640 acres, unless the total acreage in the lease being partially assigned includes an irregular subdivision, as provided in § 3203.2 of this title in which case the assigned and retained portions may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added, or (b) an undivided interest is created by assignment of a lease containing less than 640 acres, or (c) where the lease being assigned contains 640 acres or more, and undivided interest of less than 10 percent would be created in the leased acreage. An exception to the minimum acreage provision of this section may be made by the authorized officer where he finds such exception is necessary in the interest of conservation of the resources.

[38 FR 35097, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983; 53 FR 17371, May 16, 1988]

§ 3241.1-2 Transfers of operating rights.

A working interest or operating right in a lease also may be transferred under this subpart.

[53 FR 17371, May 16, 1988]

§ 3241.2 Requirements for filing of transfers.

§ 3241.2-1 Place of filing and filing fee.

A request for approval of a transfer of a lease or interest therein shall be filed in the proper BLM office and accompanied by a nonrefundable filing fee of $50. A transfer not accompanied by the required nonrefundable filing fee shall not be accepted and shall be returned.

[53 FR 17371, May 16, 1988]

§ 3241.2-2 Time of filing of transfers.

(a) A request for approval of a transfer of a lease or of an interest therein, including a transfer of operating rights (sublease), shall be filed in the proper BLM office within 90 days from the date of execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect.

(b) A separate transfer shall be filed in the proper BLM office for each geothermal lease involving transfers of record title or of operating rights (sublease). When transfers to the same person, association, including partnerships, or corporation, involve more than 1 geothermal lease, 1 request for approval shall be sufficient.

[53 FR 17371, May 16, 1988]

§ 3241.2-3 Forms and number of copies required.

A current form approved by the Director or an exact reproduction of the front and back thereof shall be used for each transfer of record title or of operating rights (sublease). A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. Three copies of the form, including at least 1 originally executed copy, shall be filed in the proper BLM office.

[53 FR 17371, May 16, 1988]

§ 3241.2-4 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed in a lease is conveyed.

[53 FR 17371, May 16, 1988]

§ 3241.3 Bonds.

Where a transfer does not create separate leases, the transferee, if the transfer so provides, may become a coprincipal on the bond with the transferor. Any transfer which does not convey the transferor's record title in all of the lands in a lease shall also be accompanied by a consent of his/her surety to remain bound under the bond as to the lease retained by said transferor, if the bond, by its terms, does not contain such consent. If a party to the transfer has previously furnished a statewide or nationwide bond, as appropriate, no additional showing by such party is necessary as to the bond requirement.

[53 FR 17371, May 16, 1988]

§ 3241.4 Approval.

The request for transfer of record title or of operating rights (sublease) shall be approved upon the execution of the forms by the authorized officer.

Upon approval, a transfer shall be effective as of the first day of the lease month following the date of filing of the transfer. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

[53 FR 17371, May 16, 1988]

§ 3241.5 Continuing responsibility.

(a) The transferor and his/her surety shall continue to be responsible for the performance of any obligation under the lease until the transfer is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as if no such transfer had been filed for approval.

(b) Upon approval, the transferee and his/her surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the transfer to the contrary.

(c) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

[53 FR 17371, May 16, 1988]

§ 3241.6 Production payments.

If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items.

§ 3241.7 Overriding royalty interests.

§ 3241.7-1 General.

(a) Overriding royalty interests in geothermal leases constitute accountable acreage holdings under these regulations.

(b) If an overriding royalty interest is created which is not shown in the instrument of transfer, a statement shall be filed in the proper BLM office describing the interest.

(c) All transfers of overriding royalty interests shall be filed for record in the proper BLM office within 90 days from the date of execution. Such interests shall not receive formal approval.

[38 FR 35097, Dec. 21, 1973, as amended at 48 FR 24369, June 1, 1983; 53 FR 17371, May 16, 1988]

§ 3241.7-2 Limitation of overriding royalties.

(a) Except as herein provided, an overriding royalty on the value of the output of all geothermal resources, or any of them, at the point of shipment to market may be created by assignment or otherwise: *Provided*, That, (1) the overriding royalty is not for less than one-fourth (¼) of 1 percent of the value of such output, and does not exceed 50 percent of the rate of royalty due to the United States as specified in the geothermal lease, or as reduced pursuant to such lease, and (2) the overriding royalty, when added to overriding royalties previously created does not exceed the maximum rate established herein.

(b) The creation of an overriding royalty interest that does not conform to the requirements of paragraph (a) of this section shall be deemed a violation of the lease terms, unless the agreement creating overriding royalties provides (1) for a prorated reduction of all overriding royalties so that the aggregate rate of royalties does not exceed the maximum rate established in paragraph (a) of this section and (2) for the suspension of an overriding royalty during any period when the royalties due to the United States have been suspended pursuant to the terms of the geothermal lease.

§ 3241.8 Lease account status.

Unless the lease account is in good standing as to the area covered by a transfer at the time the transfer is filed, or is placed in good standing before the transfer is acted upon, the request for approval of the transfer shall be denied.

[53 FR 17371, May 16, 1988]

§ 3241.9 Effect of transfer.

A transfer of record title of the complete interest in a portion of the lands in a lease shall segregate the transferred and retained portions of the lease into separate and distinct leases. A transfer of an undivided record title interest in the entire leasehold or a transfer of operating rights (sublease) shall not segregate the lease into separate or distinct leases.

[53 FR 17371, May 16, 1988]

Subpart 3242—Production and Use of Byproducts

§ 3242.1 General.

Where the authorized officer determines that production, use, or conversion of geothermal steam under a geothermal lease is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water contained in or derived from such geothermal steam for beneficial use in accordance with applicable State water laws, the authorized officer shall require substantial beneficial production or use thereof, except where he/she determines that:

(a) Beneficial production or use is not in the interest of conservation of natural resources;

(b) Beneficial production or use would not be economically feasible; or

(c) Beneficial production and use should not be required for other reasons satisfactory to him/her.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17371, May 16, 1988]

§ 3242.2 Production and use of commercially demineralized water as a byproduct, production, and use of other sources of water.

§ 3242.2-1 General.

Except as provided in these regulations, or the lease, the lessee shall have the right to process fluids, including brine, condensate, and other fluids, which are associated with geothermal steam within lands subject to the geothermal lease for the purpose of developing, producing, and utilizing the commercially demineralized water recovered as a result of such processing.

§ 3242.2-2 Prohibition on production of commercially demineralized water.

The lessee shall not be authorized to engage in the primary production of commercially demineralized water from the produced fluids contained in or derived from geothermal steam referred to in § 3242.2-1 of this title, where such use would result in the undue waste of geothermal energy.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3242.2-3 Water wells on geothermal areas.

All leases issued under these regulations shall be subject to the condition that, where the lessee finds only potable water in any well drilled for production of geothermal resources, the Secretary may, when the water is of such quality and quantity as to be valuable and useable for agricultural, domestic, or other purpose, acquire the well with casing installed in the well at the fair market value of the casing.

§ 3242.2-4 State water laws.

Nothing in these regulations shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws.

Subpart 3243—Cooperative Conservation Provisions

§ 3243.1 Cooperative or unit plans.

To conserve the natural resources of any geothermal pool, field or like area more properly, lessees and their representatives may unite with each other or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation or any geothermal resource area, or any part thereof (whether or not any part of that geothermal resource area is then subject to any cooperative or unit plan of development or operation). Applications to unitize shall be filed with the authorized officer who shall certify whether such plan is necessary or advisable in the public interest. The procedure in obtaining approval of a cooperative or unit plan of development, the provisions for the supervision of the cooperative or unit plan, and a suggested text of an agreement, are contained in part 3280 of this title.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3243.2 Acreage chargeability.

All leases committed to any unit or cooperative plan approved or prescribed by the authorized officer shall be excepted in determining holdings or control for purposes of acreage chargeability. For the extension of leases committed to a unit plan, see subpart 3203 of this title.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3243.3 Communitization or drilling agreements.

§ 3243.3-1 Approval.

(a) When separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve or require lessees to enter into communitization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other lands, whether or not owned by the United States, when found in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the authorized officer.

(c) Executed agreements shall be submitted to the authorized officer in sufficient number to permit retention of five copies after approval.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3243.3-2 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, disclose the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement shall be signed by or in behalf of all interested necessary parties and will be effective only after approval by the authorized officer.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3243.4 Operating, drilling, development contracts or a combination for joint operations.

§ 3243.4-1 Approval.

(a) The authorized officer may, on such conditions as may be prescribed, approve operating, drilling or development contracts made by 1 or more geothermal lessees, with 1 or more persons, associations, including partnerships, or corporations whenever the authorized officer determines that such contracts are required for the conservation of natural resources or are in the best interest of the United States.

(b) Contracts submitted for approval under this section should be filed with the authorized officer together with enough copies to permit retention of five copies after approval.

(c) The authority of the authorized officer to approve operating, drilling or development contracts without regard to acreage limitations ordinarily shall be exercised only to permit operators to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transmission, transportation, or utilization of geothermal resources, and to finance the same.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3243.4-2 Requirements.

(a) The contract shall be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details shall be furnished so the authorized officer may have facts upon which to make a definite determination in accordance herewith and to prescribe the conditions on which approval of the contracts shall be made.

(b) The application shall show a reasonable need for the contract and that it will not result in any concentration of control over the production or sale of geothermal resources which would be inconsistent with the antimonopoly provisions of law.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3243.4-3 Acreage chargeability.

All leases operated under approved operating, drilling or development contracts shall be excepted in determining holdings or control for purposes of acreage chargeability.

Subpart 3244—Terminations and Expirations

§ 3244.1 Relinquishments.

(a) A lease, or any legal subdivision thereof, may be surrendered by the record title holder or the holder's duly authorized agent by filing a written relinquishment in the proper BLM office. A partial relinquishment shall not reduce the remaining acreage in the lease to less than 640 acres, except where a departure is occasioned by an irregular subdivision. The minimum acreage provision may be waived by the authorized officer when it is determined that an exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment shall:

(1) Describe the lands to be relinquished as described in the lease;

(2) Include a statement as to whether the relinquished lands had been disturbed and if so whether they were restored as prescribed by the terms of the lease;

(3) State whether wells had been drilled on the lands and if so whether they had been placed in condition for abandonment; and

(4) Furnish a statement that all moneys due and payable to workmen employed on the leased premises have been paid.

(b) A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety:

(1) To make payments of all accrued rentals and royalties;

(2) To place all wells on the land to be relinquished in condition for suspension of operations or abandonment;

(3) To restore the surface resources in accordance with all regulations and the terms of the lease; and

(4) To comply with all other environmental stipulations provided for by such regulations or lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3244.2 Automatic terminations and reinstatements.

§ 3244.2-1 General.

Except as provided in § 3244.2-2 of this title any lease will automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the designated Service office is not open on the day a payment is due, payment received on the next day the designated Service office is open to the public shall be deemed timely made. The termination of the lease for failure to pay the rental must be noted on the official records of the proper BLM office.

[38 FR 35097, Dec. 21, 1973, as amended at 48 FR 6337, Feb. 14, 1983; 53 FR 17372, May 16, 1988]

§ 3244.2-2 Exceptions.

(a) *Nominal deficiency.* If the rental payment due under a lease is received on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal, the lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in a Notice of Deficiency, or by the due date, whichever is later. A deficiency is nominal if it is not more than $10 or one percentum (1%) of the total payment due, whichever is more. The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office. If the payment called for in the notice is not made within the time allowed, the lease will have terminated by operation of law as of its anniversary date.

(b) *Reinstatements.* (1) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated automatically for failure to pay the full amount of rental due on or before the anniversary date, if it is shown to his satisfaction that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence shall include a rental payment that is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the proper BLM office.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a lease be reinstated if (i) a valid lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by the terminated lease, or (ii) the interest in the lands has been withdrawn, disposed of, or has otherwise become unavailable for leasing. However, the authorized officer will not issue a new lease for lands covered by a lease which terminated automatically until 90 days after the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary. The basic criterion in accordance with which this discretion will be exercised is whether the Secretary would be willing to issue a lease if a new lease offer for the same land were under consideration.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

§ 3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.

A lease may be canceled by the authorized officer for any violation of these regulations, the regulations in 43 CFR part 3260, or the lease terms, 30 days after receipt by the lessee of notice from the authorized officer of the violation, unless (a) the violation has been corrected, or (b) the violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. A lessee shall be entitled to a hearing on the matter of any such claimed violation or proposed cancelation of lease if a request for a hearing is made to the authorized officer within the 30-day period after notice. The procedures with respect to notice of such hearing and the conduct thereof, and with respect to appeals from decisions of Administrative Law Judges upon such hearings shall follow insofar as practicable the procedural rules applicable to hearings and appeals in public lands cases within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, contained in Department Hearings and Appeals Procedures, part 4 of this title. The period for correction of violation or commencement to correct a violation of regulations or of lease terms, as aforesaid, shall be extended to 30 days after the lessee's receipt of the Administrative Law Judge's decision upon such a hearing if the Administrative Law Judge shall find that a violation exists.

§ 3244.4 Expiration by operation of law.

(a) Any lease for land on which, or for which under an approved cooperative or unit plan of development or operation, there is no production in commercial quantities, or a producing well, or actual drilling operations being diligently prosecuted, will expire at the end of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands previously covered by that expired lease will be subject to the filing of new applications for leases only as provided in these regulations.

(b) Any lease that has continued beyond the end of its primary or extended term based on the existence of a well capable of producing geothermal resources in commercial quantities, shall expire 30 days after receipt of a decision from the authorized officer determining that diligent efforts are not being made toward utilization of geothermal resources; unless, during such 30-day period, the lessee provides the authorized officer satisfactory evidence that diligent efforts are in fact being made.

[38 FR 35097, Dec. 21, 1973, as amended at 54 FR 13887, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3244.5 Removal of materials and supplies upon termination of lease.

Upon the expiration of the lease, or the earlier termination thereof pursuant to this subpart, the lessee shall have the privilege at any time within a period of ninety (90) days thereafter of removing from the premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures, and equipment subject to removal, but not removed within the 90-day period, or any extension thereof that may be granted because of adverse climatic conditions during that period, shall at the option of the authorized officer, become property of the lessor, but the lessee shall remove any or all such property where so directed by the lessor.

[38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988]

PART 3250—UTILIZATION OF GEOTHERMAL RESOURCES

Subpart 3250—Utilization of Geothermal Resources

Sec.

3250.0-1 Purpose.
3250.0-3 Authority.
3250.0-5 Definitions.
3250.0-6 Policy.
3250.1 Applications.
3250.1-1 Requirements for application.
3250.1-2 Who may hold licenses.
3250.2 Action on application.
3250.3 Environmental analysis.
3250.4 Actions not requiring a license.
3250.4-1 Research and demonstration projects.
3250.4-2 Individual well production utilization.
3250.5 Action required on designated lands.
3250.5-1 Withdrawn or reserved lands.
3250.5-2 Lands under the jurisdiction of the Forest Service.
3250.5-3 Lands subject to section 24 of the Federal Power Act.
3250.5-4 Lands not subject to license.
3250.6 Licenses.
3250.6-1 Area covered by license.
3250.6-2 License provisions.
3250.6-3 Annual rental.
3250.7 Bonds.
3250.8 Assignments and transfers.
3250.9 Relinquishment, expiration, or termination of license.

AUTHORITY: Secs. 3 and 24, Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

SOURCE: 44 FR 20391, Apr. 4, 1979, unless otherwise noted.

Subpart 3250—Utilization of Geothermal Resources

§ 3250.0-1 Purpose.

The purpose of this subpart is to establish procedures for the utilization of Federal lands under geothermal lease by persons who have purchased or otherwise acquired the production of geothermal steam and geothermal resources.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17045, Apr. 20, 1983]

§ 3250.0-3 Authority.

These regulations are issued pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) which authorizes the Secretary of the Interior to prescribe rules and regulations for the development, utilization, and conservation of geothermal steam resources, protection of the public interest, prevention of waste, and protection of water quality and other environmental qualities. The right to use lands under geothermal lease for the purpose of utilizing geothermal resources may be exercised only in accordance with these regulations.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17045, Apr. 20, 1983; 53 FR 17372, May 16, 1988]

§ 3250.0-5 Definitions.

As used in this subpart, the term:

(a) *Licensee* means the individual, partnership, corporation, association, municipality or governmental unit which is authorized to use public lands for the construction of facilities and utilization of geothermal resources pursuant to this subpart.

(b) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(c) *Proper BLM office* means the State office of the Bureau of Land Management which administers the land subject to the geothermal lease.

(d) *Utilization site* means that tract of Federal lands under geothermal lease authorized for utilization of geothermal energy including, but not limited to, substations, switch yards, waste disposal and storage facilities, utility service lines, transmission lines, loading docks, processing plants, greenhouses, gasohol plants, crop dryers and appurtenant structures.

(e) *Joint Utilization Agreement* means the arrangement between the holder of a geothermal resource lease and a third party for utilization of geothermal steam and associated geothermal resources produced from a leasehold, for operation of utilization facilities.

(f) *Federal Geothermal Lease* means a lease issued under the Geothermal Steam Act of 1970 pursuant to the leasing regulations contained in part 3200 of this title.

(g) *Producible well* means a well capable of producing geothermal steam or geothermal resources in commercial quantities as defined in 43 CFR 3260.0-5 (f) and (g).

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

§ 3250.0-6 Policy.

It is the policy of this Department to encourage the development and utilization of geothermal resources leased under the Geothermal Steam Act of 1970 in an environmentally acceptable manner. Granting of a lease carries an implied right to reasonable access and land use for development. The provisions of these regulations shall be applied, however, in order to assure reasonable compatibility of any proposed utilization with other authorized uses and resource values of the land.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

§ 3250.1 Applications.

§ 3250.1-1 Requirements for application.

Any lessee or any party to a joint utilization agreement or a sales contract who desires a license to use the surface of lands under Federal geothermal lease for construction of utilization facilities, other than as provided in part 3260 and § 3250.4 of this title, shall file an application with the authorized officer.

(a) An application for a license shall be filed in duplicate in the proper BLM office.

(b) Each application must be accompanied by a non-refundable fee of $50.

(c) No specific form is required.

(d) Each application shall include:

(1) A description of the land applied for by legal subdivision, section, township and range, or by approved protraction surveys, if applicable. If the lands have not been surveyed, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and connected by courses and distances to an official corner of the public land surveys or a prominent readily identifiable ge-

ographic location. The approximate acreage involved shall be included as part of the description.

(2) A map or maps showing the boundaries of the site and the location and dimensions of buildings, cooling towers or ponds, waste disposal or storage sites, switch yards, roads, pipelines, utility service lines, transmission lines and all other structures or facilities used in connection with the utilization of the geothermal steam and associated geothermal resources. In addition, the authorized officer may require maps showing the general location of proposed facilities to be used in connection with utilization of the geothermal resources but outside the license area.

(3) A description of the proposed facility including pertinent information about any substations included in the facility, indicating whether the proposed facility is to be interconnected with other facilities and whether the energy produced is to be sold to others or used by the applicant.

(4) A copy of any joint utilization agreement or sales contract entered into with a Federal geothermal lessee or lessees and the applicant for the utilization of geothermal steam and associate geothermal resources.

(5) A statement showing the amount of merchantable timber, if any, to be cut, removed or destroyed in the construction of the proposed plant or facility, and a statement of agreement to deposit with the Bureau of Land Management, in advance of contruction, the dollar amount as determined by the authorized officer to be the full stumpage value of the timber to be cut, removed or destroyed.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

§ 3250.1–2 Who may hold licenses.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental units, including, without limitations, municipalities.

[53 FR 17372, May 16, 1988]

§ 3250.2 Action on application.

Where the authorized officer determines that an application is incomplete or not in conformity with the law or regulations, he shall notify the applicant of the deficiencies and provide an opportunity for correction of the deficiency.

§ 3250.3 Environmental analysis.

The authorized officer shall complete, in a timely manner, any environmental review determined to be necessary to conform with the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

[48 FR 17046, Apr. 20, 1983]

§ 3250.4 Actions not requiring a license.

§ 3250.4–1 Research and demonstration projects.

A research and demonstration (R. & D.) project sited on a Federal geothermal lease consisting of a power generating facility of not more than 20 MW's electrical capacity and with a maximum life of five years from the date the facility becomes operational will not require a license under the regulations of this subpart. An R. & D. permit for a facility of 20 MW's or less shall be obtained from the Area Geothermal Supervisor under the provisions of 43 CFR part 3260. In the event an R. & D. project is proposed to be retained for commercial operation after the initial five-year period, a license shall be obtained under this subpart. Application for such a license may be submitted prior to construction or at any time during the 5 year permitted life period of the R. & D. project if conversion of the facility to a power plant is contemplated during the permit period. R. & D. permits granted under 43 CFR part 3260 shall conform to the provisions of § 3200.0–6 of this title.

[44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988]

§ 3250.4–2 Individual well production utilization.

A license shall not be required for the purpose of installing a facility for testing or utilization of the production from an individual well for either electrical power generation or any nonelectrical beneficial use. However, a license shall be required for any substation or facility for transmission or lease of more than 10 MW maximum output. In order to install such a facility, a permit shall be obtained from the authorized officer under the provisions of part 3260 of this title. Permits granted under part 3260 of this title shall conform with the requirements of § 3200.0-6 of this title.

[44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988]

§ 3250.5 Action required on designated lands.

§ 3250.5-1 Withdrawn or reserved lands.

(a) Where the land sought for utilization facilities for geothermal steam or associated geothermal resources is withdrawn or reserved for the use of a Federal Agency other than Interior, the authorized officer shall consult with such other agency before the license is issued. The license shall include any terms and conditions required by the surface managing agency.

(b) Where the land sought for utilization facilities for geothermal resources is withdrawn or reserved for the use of an Interior agency, the authorized officer shall consult with such agency before the license is issued. The license shall include any terms and conditions deemed appropriate by the authorized officer.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

§ 3250.5-2 Lands under the jurisdiction of the Forest Service.

Where the land sought for utilization facilities for geothermal resources is on any National Forest System lands, the authorized officer shall consult with and obtain the agreement of the Forest Service regarding the specific site selection before the license is issued. The license shall include terms and conditions required by the Forest Service for protection of National Forest resources and for multi-use management.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

§ 3250.5-3 Lands subject to section 24 of the Federal Power Act.

Where the land sought for a power plant site utilizing geothermal steam or associated geothermal resources is subject to the provisions of section 24 of the Federal Power Act, as amended (16 U.S.C. 818), the license shall be issued subject to such terms and conditions as the Federal Energy Regulatory Commission, Department of Energy, may prescribe.

§ 3250.5-4 Lands not subject to license.

No license shall be issued for lands which are not subject to leasing for development of geothermal resources, including, but not limited to, lands:

(a) Administered as part of the national park system;

(b) Within a national recreation system;

(c) Within a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction, or which are designated as rare and endangered species by the Secretary, or under active consideration for inclusion in such categories as evidenced by the filing of a application for a withdrawal or a proposed withdrawal; or

(d) Held in trust or restricted status for an Indian tribe or individual, within or without the boundaries of an Indian reservation.

§ 3250.6 Licenses.

§ 3250.6-1 Area covered by license.

(a) The area approved for the proposed utilization site shall be reasonably compact as determined by the authorized officer and shall be limited to as much of the surface of the lands applied for as the authorized officer determined necessary for the adequate utilization of the geothermal resources.

(b) Prior to commencing any surface disturbance activities related to the construction of a utilization facility licensed under provisions of this group, a permit to construct a utilization facility shall be obtained from the authorized officer. The application for such permit shall be filed in triplicate under the regulations in part 3260 of this title.

[48 FR 17046, Apr. 20, 1983, as amended at 53 FR 17373, May 16, 1988]

§ 3250.6-2 License provisions.

(a) A license for a utilization facility shall be granted for a primary term of 30 years with a preferential right to a renewal of such license under such terms and conditions as the authorized officer may deem appropriate.

(b) A license shall include such terms and conditions as the authorized officer determines are necessary to protect the mineral, environmental, fish and wildlife, historical and scenic or other resource values of the public lands.

(c) A license shall require a copy of any utility commission license or other Federal, State or local license or permit that is applicable to the proposed utilization facility to be furnished prior to commencement of any activity relating to plant operation.

[44 FR 20931, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983; 53 FR 17373, May 16, 1988]

§ 3250.6-3 Annual rental.

Rental at a rate to be determined by the authorized officer shall be paid annually, but said rental shall not be less than $100 per acre or fraction thereof if the utilization facility is for electrical generation, or not less than $10 per acre or fraction thereof if the utilization facility is for non-electrical purposes. The first year's rental shall be paid to the authorized officer before issuance of the license and thereafter the rental shall be payable annually on or before the anniversary date of the license. The license shall provide that, beginning with the tenth year, the rental for the lands embraced in the license shall be reassessed, excluding improvements due to development of the geothermal resources, at the discretion of the authorized officer upon notice to the licensee, but not more often than at 10 year intervals thereafter, except in extraordinary circumstances.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983; 53 FR 17373, May 16, 1988]

§ 3250.7 Bonds.

Bonds shall be either corporate surety bonds or personal bonds.

(a) *Surety bond.* The licensee of an electrical generating facility shall furnish and maintain a surety bond of not less than $100,000, conditioned upon compliance with all the terms and conditions of the license. The licensee for a nonelectrical utilization facility may be required to furnish a surety bond in an amount specified by the authorized officer. The authorized officer may determine not to require a surety bond in circumstances where it is determined that the nonelectrical uses have a low potential for causing damage to the environment.

(b) *Personal bond.* In lieu of a surety bond, the licensee may submit a personal bond accompanied by cash in an amount equal to the dollar amount of the bond or negotiable securities of the United States having a market value at the time of the deposit of not less than the required dollar amount of the bond.

(c) *Obligations under bond.* The licensee shall comply with all the terms and conditions of the license under this subpart and shall be:

(1) Liable for all damages to the lands or property of the United States caused by the licensee or his employees or contractors or employees of such contractors, and

(2) Indemnify the United States against any liability for damages or injury to life, person or property arising from the occupancy or use of the lands under license. Where a utilization facility license is granted under this subpart to a State or other governmental agency which does not have the authority to assume such liability with respect to damages caused by it to lands or property, such agency shall be responsible for repair or all such damages.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

§ 3250.8 Assignments and transfers.

(a) Any proposed transfers in whole or in part of any right, title or interest in the plant or facility licensed under this subpart shall be filed with the authorized officer. The application for transfer shall be accompanied by the same showing of qualifications of the transferee as is required of the applicant under this subpart, and shall be supported by a stipulation that the assignee shall comply with and be bound by all the terms and conditions of the license. No transfer shall be valid unless and until it is approved in writing by the authorized officer.

(b) An application for approval of an assignment or transfer made pursuant to this section shall be accompanied by a nonrefundable filing fee of $50.

[44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988]

§ 3250.9 Relinquishment, expiration, or termination of license.

(a) A licensee may surrender a license by filing a written relinquishment in the proper BLM office. The relinquishment shall include a statement as to whether the land covered by the license has been disturbed and, if so, whether it has been restored as prescribed by the terms and conditions of the license. The relinquishment shall not be accepted until the requirements for reclamation of the land have been met.

(b) A license issued under this part may be terminated by written order of the authorized officer for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination shall not take effect if within the 30 day notice period either (1) the violation is corrected or (2) the licensee has commenced in good faith to correct the violation and shall thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. If a request for appeal is filed within the 30 day notice period, then the licensee shall be entitled to a hearing on the claimed violation and the termination in accordance with part 4 of this title. In the event such appeal is timely filed, the period for commencement to correct such violation shall be extended to 30 days after a final decision is rendered if it is found that a violation exists.

(c) Upon the relinquishment, expiration, or termination of the license, the licensee shall, if directed by the authorized officer, remove all structures, machinery, and other equipment from the land covered by the license. Any structures, machinery, or equipment allowed to remain on the land shall become the property of the United States on the expiration of the period allowed for removal of same. Removal of such property shall be at the licensee's expense.

(d) The licensee shall, for a period of not more than six months, maintain any equipment and facilities needed, as determined by the authorized officer, for the protection of any wells from which production was being utilized by the licensee.

(e) Where land covered by a license has been disturbed, the licensee shall within one year following the relinquishment, expiration, or termination of a license issued under this part restore the land in accordance with the terms and conditions of the license. Additional time may be granted by the authorized officer upon a showing of good cause by the licensee. The bond required by § 3250.7 of this title shall not be released until the reclamation has been completed to the satisfaction of the authorized officer.

[44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988]

PART 3260—GEOTHERMAL RESOURCES OPERATIONS

NOTE 1: (a) The information collection requirement contained in § 3262.4 is needed to document planned operations on geothermal leases. This information will be used to evaluate technical feasibility and environmental impacts of geothermal operations on Federal lands. The obligation to respond is mandatory. Clearance under 44 U.S.C. 3507 is not required by 44 U.S.C. 3506(c)(5).

(b) The information collection requirement contained in § 3264.3 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0132. The information is being collected to document exploration expenditures for which diligence credit is desired. This information will be used to determine if expenditures qualify as diligent exploration under 43 U.S.C. 3203.5. The obligation to respond is required to obtain a benefit.

[47 FR 24130, June 3, 1982. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17375, May 16, 1988]

NOTE 2: The information collection requirements contained in part 3260 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0132. The information is being collected to evaluate the technical feasibility and environmental impacts of geothermal operations on Federal lands. Clearance number 1004-0132 also covers information required by § 3264.3 as is required to document exploration expenditures for which diligence credit is desired in accordance with § 3203.5. A response is required to obtain a benefit.

[53 FR 17375, May 16, 1988]

NOTE 3: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal geothermal resources leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements may also specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager, and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to title 30 CFR part 270 or specific sections thereof. Those references must now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or the Minerals Management Service as appropriate.

(See 48 FR 44788, Sept. 30, 1983)

Subpart 3260—Geothermal Resources Operations: General

Sec.
3260.0-1 Purpose.
3260.0-2 Policy.
3260.0-3 Authority.
3260.0-5 Definitions.

Subpart 3261—Jurisdiction and Responsibility

3261.1 Jurisdiction.
3261.2 Responsibility of authorized officer.
3261.3 Regulation of operations.
3261.4 Required samples, tests, and surveys.
3261.5 Drilling and abandonment of wells.
3261.6 Well spacing and well casing.
3261.7 Values and payment for losses.

Subpart 3262—Requirements for Operating Rights Owners and Operators

3262.1 Lease terms, regulations, waste, damage, and safety.
3262.2 Conduct of operations.
3262.2-1 Local representative.
3262.3 Drilling and producing obligations.
3262.4 Plan of operation.
3262.4-1 Plan of utilization.
3262.4-2 Subsequent well operations, construction of new production facilities, and alteration of existing production facilities.
3262.5 Well designations.
3262.5-1 Well records.
3262.5-2 Samples, tests, and surveys.
3262.5-3 Directional survey.
3262.5-4 Well control.
3262.5-5 Well abandonment.
3262.6 Pollution.
3262.6-1 Noise abatement.
3262.6-2 Land subsidence and seismic activity.
3262.6-3 Pits and sumps.
3262.7 Accidents.
3262.7-1 Workmanlike operations.
3262.8 Departure from orders.
3262.9 Pilot operations or facility testing.

Subpart 3263—Measurement of Production

3263.1 Measurement of geothermal resources.
3263.2 Determination of content of byproducts.
3263.3 Commingling production.

Subpart 3264—Reports To Be Made by All Lessees

3264.1 General requirements.
3264.2 Applications for permit to drill, redrill, deepen, or plug-back.
3264.2-1 Application for utilization permit.
3264.2-2 Sundry notices and reports on wells.
3264.2-3 Log and history of well.
3264.2-4 Monthly report of operations.
3264.2-5 Monthly report of facility operations.
3264.3 Report of expenditures for diligent exploration operations.
3264.4 Public inspection of records.

Subpart 3265—Procedure in Case of Violation of the Regulations or Lease Terms

3265.1 Noncompliance with regulations or lease terms.

Subpart 3266—Appeals

3266.1 Appeals.

AUTHORITY: Geothermal Steam Act as amended (30 U.S.C. 1001-1025) and Order

No. 3087 dated Dec. 3, 1982, as amended on Feb. 7, 1983 (48 FR 8983).

Source: 38 FR 35068, Dec. 21, 1973, unless otherwise noted. Redesignated at 48 FR 44788, Sept. 30, 1983.

Editorial Notes:

Note 1: See Redesignation Table No. 3 appearing in the Finding Aids section of this volume.

Note 2: Nomenclature changes to this part appear at 47 FR 28370, June 30, 1982; 48 FR 44789-44792, Sept. 30, 1983.

Subpart 3260—Geothermal Resources Operations: General

§ 3260.0-1 Purpose.

The Geothermal Steam Act (30 U.S.C. 1001-1025) authorizes the Secretary of the Interior to prescribe rules and regulations applicable to operations conducted under leases granted pursuant to that Act, and for the development, conservation and utilization of geothermal steam and associated geothermal resources, the prevention of waste, the protection of the public interest and the protection of water quality and other environmental qualities.

[48 FR 44788, Sept. 30, 1983]

§ 3260.0-2 Policy.

The regulations in this part shall be administered by the Director, Bureau of Land Management.

[48 FR 44788, Sept. 30, 1983]

§ 3260.0-3 Authority.

These regulations are issued under the authority of the Geothermal Steam Act, as amended (30 U.S.C. 1001-1025) and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983), under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the leasing of restricted Indian lands, to the Bureau of Land Management.

[48 FR 44788, Sept. 30, 1983]

§ 3260.0-5 Definitions.

As used in the regulations in this part, the term:

(a) *Lessee* means a person or entity holding record title in a lease issued by the United States.

(b) *Operator* means any person or entity, including but not limited to the lessee, operating rights owner (sublessee), or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(c) *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

(d) *Waste* means (1) physical waste,as that term is generally understood; (2) waste of reservoir energy through inefficiency, improper use of or unnecessary dissipation of reservoir energy; (3) the location, spacing, drilling, equipping, operating, or producing of any geothermal well or wells in a manner which causes or tends to cause reduction in the quantity of geothermal energy ultimately recoverable from a reservoir under prudent and workmanlike operations or which tends to cause unnecessary or excessive surface or subsurface loss or destruction of geothermal energy; and (4) the inefficient transmission of geothermal energy from the source (wellhead) to point of utilization.

(e) *Directionally drilled well* means the deviation of a well bore from the vertical or from its normal course in an intended predetermined direction or course with respect to the points of the compass. Directionally drilled well shall not include a well deviated for the purpose of straightening a hole that has become crooked in the normal course of drilling or holes deviated at random without regard to compass direction in an attempt to sidetrack a portion of the hole on account of mechanical difficulty in drilling.

(f) *Geothermal resources operational order* or *GRO order* means a formal numbered order, issued by the authorizd officer, with the prior approval of the Director, which implements the regulations in this part and applies to operations in an area, region, or any significant portion thereof.

(g) *Producible well* means a well which is capable of producing geothermal resources in commercial quantities.

(h) *Commercial quantities* means quantities sufficient to provide a return after all variable costs of production have been met.

(i) *Exploration operations* means any activities, relating to the search for evidence of geothermal resources, which require physical presence upon the leased lands and which may result in damage to the leased lands or the resources contained within. It includes, but is not limited to, geophysical operations, drilling and coring of shallow temperature gradient wells, construction of roads and trails, and cross-country transit by vehicle. It does not include casual use activities associated with geothermal resources exploration. In addition, it does not include core drilling to obtain subsurface geologic information, except in conjunction with the drilling of shallow temperature gradient wells, nor does it include the drilling for, the testing of, or the production of geothermal resources. However, these limitations do not preclude the drilling of holes necessary for the emplacement of explosive charges for certain geophysical operations nor do they affect the right to drill for, test, or produce the geothermal resources on lands subject to his lease.

(j) *Casual use* means activities that involve practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. For example, activities that do not involve use of heavy equipment or explosives and that do not involve vehicle movement except over established roads and trails are *casual use*.

(k) *Individual Production Well Facility* means a facility located on a Federal geothermal lease that utilizes geothermal resources from a single well for electrical power generation or for nonelectrical purposes and which has an output of not more than 10-megawatt net capacity or heat energy equivalent.

(l) *Research and Demonstration Facility*, means a facility located on a Federal geothermal lease which: (1) Utilizes geothermal resources from one or more wells, (2) has an output of not more than 20-megawatt net capacity or heat energy equivalent, and (3) will be utilized exclusively for the research and demonstration of applications for the utilization of geothermal resources during an intitial project life of not more than 5 years from the date the facility becomes operational.

(m) *Plant Facility* means a facility located on a Federal geothermal lease, other than an Individual Well Production Facility or a Research and Development Facility, that utilizes geothermal resources for electric power generation or nonelectric purposes.

(n) *Utilization Facility Site* means that portion of an area of operations for which a plan of utilization, filed pursuant to § 270.34-1 of this part, has been approved for the siting of an Individual Production Well Facility, a Research and Demonstration Facility, or a Plant Facility, including appurtenant structures.

(o) *Facility operator* means the operator, licensee, or the individual, corporation, association, or municipality that operates any facility on a Federal geothermal lease for the beneficial utilization of geothermal resources.

(p) *Joint Facility Operating Agreement* means an agreement between an operating rights owner or licensee and another party for the siting, construction, and operation of facilities for the utilization of the geothermal resources produced from a Federal geothermal lease or leases.

[43 FR 13833, Mar. 31, 1978, as amended at 44 FR 37588, June 27, 1979; 47 FR 28370, June 30, 1982. Redesignated and amended at 48 FR 44788, 44789, Sept. 30, 1983, further amended at 53 FR 17373, May 16, 1988]

Subpart 3261—Jurisdiction and Responsibility

§ 3261.1 Jurisdiction.

Drilling, production, construction, and operation of any facility for the utilization of geothermal resources and handling and measurement of production, and, in general, all operations conducted on a geothermal lease are subject to the regulations in this group. These operations are subject to the jurisdiction of the authorized officer for the area in which the leased lands are situated.

[48 FR 44789, Sept. 30, 1983]

§ 3261.2 Responsibility of authorized officer.

The authorized officer is authorized and directed to carry out the provisions of this part. The authorized officer shall require compliance with the terms of geothermal leases, with the regulations in this group and with the applicable statutes. The authorized officer shall act on all applications, requests, and notices required in this part. In executing the functions under this part, the authorized officer shall ensure that all permitted operations conform to the best practice and are conducted in a manner that protects the deposits of the leased lands and results in the maximum ultimate recovery and the beneficial utilization of geothermal resources, with minimum waste. The authorized officer shall also ensure that all permitted operations are consistent with the principles of the use of the lands for other purposes and the protection of the environment. As conditions in one area may vary widely from conditions in another area, the regulations in this part are intended to be general in nature. Detailed procedures hereunder in any particular area will be covered by GRO Orders. The requirements to be set forth in GRO Orders relating to surface resources or uses will be coordinated with the appropriate land management agency if other than BLM. The authorized officer may issue oral orders to govern lease operations, but such orders shall be confirmed in writing by the authorized officer as promptly as possible. The authorized officer may issue other orders and instructions to govern the development, method for production and the utilization of a deposit, field or area. Prior to issuance of GRO Orders, other written orders and instructions, or the approval of any plan of operation, the authorized officer shall consult with and receive comments from appropriate Federal and State agencies, operating rights owners, operators, and other interested parties. Before permitting operations to be commenced on the leased lands, the authorized officer shall determine if the lease is in good standing; whether the applicant has filed an acceptable bond, and has, when requried by the regulations in this part, an approved plan of operations and/or plan of utilization, notice of intent, Sundry Notice or other appropriate permit. Approval of a plan of operations or other permit does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct operations.

[48 FR 44789, Sept. 30, 1983, as amended at 53 FR 17373, May 16, 1988]

§ 3261.3 Regulation of operations.

(a)(1) All operations performed under this part shall be conducted so as to:

(i) Prevent the unnecessary waste of or damage to geothermal or other resources;

(ii) Protect the quality of surface and subsurface waters, air, and other natural resources, including wildlife, soil, vegetation, and natural history;

(iii) Protect the quality of valuable cultural resources, including archeological, historical, scenic and recreational resources;

(iv) Accommodate, as much as possible, other land uses;

(v) Protect human and wildlife resources from harmful levels of noise;

(vi) Prevent injury to life; and

(vii) Prevent damage to property, particularly from subsidence.

(2) The authorized officer shall inspect and supervise all operations under this part to ensure that the requirements of paragraph (a)(1) of this section are fulfilled, and shall issue such GRO Orders as are necessary to discharge this responsibility.

(3) GRO Orders shall be enforceable under § 3265.1 of this title.

(b) The authorized officer, through coordination with appropriate Federal surface managing agencies and in cooperation with other concerned Federal, State, and local agencies, shall prepare an environmental assessment in connection with any and all plans submitted to the authorized officer pursuant to § 3262.4-1 of this title.

(1) The environmental assessment shall include a description of the proposed action, an evaluation of the potential impact of the proposed action on the affected area, a discussion of alternatives to the proposed action, and a description of the mitigating measures that will be applied to eliminate or reduce adverse impacts. The environmental assessment shall also include a statement of reasons as to whether or not an environmental impact statement (EIS) is required.

(2) The authorized officer shall determine whether or not an environmental impact statement is required, based upon the findings and conclusions of the environmental assessment. If an environmental impact statement is required, it shall be prepared in accordance with the provisions of 40 CFR Group 1500.

(3) The environmental assessment shall be considered by the authorized officer in determining the appropriate terms and conditions for approval of the submitted plan.

(4) A copy of an environmental assessment completed under this section shall be submitted to the Geothermal Environmental Advisory Panel. All documents comprising such an assessment shall be made available for review to interested parties with the exception of those data which are subject to the provisions of § 3264.5 of this title. Upon completion of an environmental assessment, the authorized officer shall take such measures as are appropriate to notify appropriate Federal, State, and local agencies, and the public, of the availability of the assessment for review.

[44 FR 37589, June 27, 1979. Redesignated and amended at 48 FR 44788, 44789, Sept. 0, 1983]

3261.4 Required samples, tests, and surveys.

When necessary or advisable, the au- horized officer shall require that ade- uate samples be taken and tests or rveys be made using acceptable chniques, without cost to the lessor, determine the identity and charac- r of formations; the presence of geothermal resources, water, or reservoir energy; the quantity and quality of geothermal resources, water or reservoir energy; the amount and direction of deviation of any well from the vertical: formation, casing, and tubing pressures, temperatures, rate of heat and fluid flow, and whether operations are conducted in a manner looking to the protection of the interests of the lessor.

§ 3261.5 Drilling and abandonment of wells.

The authorized officer shall require that drilling be conducted in accordance with the terms of the lease, GRO orders, and the regulations in this group; and shall require plugging and abandonment of any well or wells no longer necessary for operations in accordance with plans approved or prescribed by him. Upon the failure of a lessee to comply with any requirement under this section, the authorized officer is authorized to perform the work at the expense of the lessee and the surety.

[38 FR 35068, Dec. 21, 1973. Redesignated and amended at 48 FR 44788, 44789, Sept. 30, 1983]

§ 3261.6 Well spacing and well casing.

The authorized officer shall approve proposed well-spacing and well-casing programs or prescribe such modifications to the programs as he determines necessary for proper development, giving consideration to such factors as:

(a) Topographic characteristics of the area;

(b) Hydrologic, geologic and reservoir characteristics of the field;

(c) The number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use;

(d) Protection of correlative rights;

(e) Minimizing well interference;

(f) Unreasonable interference with multiple use of lands; and

(g) Protection of the environment, including ground water quality.

§ 3261.7 Values and payment for losses.

The authorized officer shall determine the value of production accruing to the lessor where there is loss through waste or failure to drill and produce protection wells on the lease, and the compensation due to the lessor as reimbursement for such loss. Payment for such losses will be paid when billed.

Subpart 3262—Requirements for Operating Rights Owners and Operators

§ 3262.1 Lease terms, regulations, waste, damage, and safety.

(a) The operating rights owner or operator, as appropriate, shall comply with the lease terms, lease stipulations, applicable laws and regulations and any amendments thereof, GRO orders, and other written or oral orders of the authorized officer. All oral orders (to be confirmed in writing as provided in § 3261.2 of this title are effective when issued unless otherwise specified.

(b) The operating rights owner or operator, as appropriate, shall take all reasonable precautions to prevent: (1) Waste; (2) damage to any natural resource including trees and other vegetation, fish and wildlife and their habitat; (3) injury or damage to persons, real or personal property; and (4) any environmental pollution or damage.

(c) Any significant effect on the environment created by the operations or failure to comply with environmental standards shall be reported to the authorized officer within 24 hours and confirmed in writing within 30 days.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17373, May 16, 1988]

§ 3262.2 Conduct of operations.

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with subpart 3206 of this title.

(b) In all cases where an individual production well facility, research and demonstration facility, or plant facility is to be operated by a party other than the operating rights owner or licensee, such other party shall submit to the authorized officer the joint facility operating agreement between the operating rights owner or licensee and the facility operator. Such joint facility operating agreement shall authorize, upon acceptance by the authorized officer, the facility operator to enter upon the proposed facility site and related sites and to conduct thereon, in accordance with § 3262.4-1 of this title, such preliminary geologic and soil studies as are appropriate for the planning and design of the facilities necessary for the utilization of geothermal resources in the manner proposed. An operating rights owner, operator, or licensee also may construct and operate such facilities as have been approved under a plan of operation or utilization and for which a permit has been issued pursuant to the regulations in this part and, if a plant facility, for which a license has been issued in accordance with the regulations in this group.

[53 FR 17373, May 16, 1988]

§ 3262.2-1 Local representative.

When required by the authorized officer, the operator shall designate a local representative empowered to receive notices and comply with orders of the authorized officer issued pursuant to the regulations in this part.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.3 Drilling and producing obligations.

(a) The operating rights owner shall diligently drill and produce such wells as are necessary to protect the lessor from loss by reason of production on other properties, or in lieu thereof, with the consent of the authorized officer, shall pay a sum determined by the authorized officer as adequate to compensate the lessor for failure to drill and produce any such well.

(b) The operating rights owner shall promptly drill and produce such other wells as the authorized officer may require in order that the lease be developed and produced in accordance with good operating practices. (See § 3203.5 of this title.)

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.4 Plan of operation.

Except as otherwise provided in these regulations, a operator, prior to commencing operations on the leased lands or on lands subject to an approved unit or cooperative agreement, shall obtain the approval of a plan of operation by the authorized officer. A plan of operation is not required for: Subsequent well operations, the construction of new production facilities, or the alteration of existing production facilities, unless specifically required by the authorized officer, exploration operations or casual use activities. However, unless a previously approved plan included a specific authorization for subsequent well operations, construction of new production facilities, alteration of existing production facilities or exploration operations, the operator may not conduct such operations or activities without the authorized officer's prior approval. Before commencing a subsequent well operation, the construction of a new production facility or the alteration of an existing production facility, the operator shall, as a minimum, obtain the authorized officer's approval of a permit or of a sundry notice, whichever is appropriate. Before commencing exploration operations, the lessee shall obtain the authorized officer's approval of a notice of intent. When a plan of operation is required by the regulations in this part, it shall be filed in triplicate with the authorized officer and shall include:

(a) The proposed location of each well, including a layout showing the position of the mud tanks, reserve pits, cooling towers, pipe racks, and other surface facilities;

(b) Existing and planned access and ateral roads;

(c) Location and source of authorized water supply and road building material;

(d) Location of camp sites, airstrips, nd other support facilities;

(e) Other areas of potential surface isturbance;

(f) The topographic features of the nd and the drainage patterns;

(g) Methods for disposing of waste material;

(h) A narrative statement describing the proposed measures to be taken in conducting the proposed operation for the protection of the environment, including, but not limited to, the prevention or control of (1) fires, (2) soil erosion, (3) pollution of the surface and ground water, (4) damage to fish and wildlife or other natural resources, (5) air and noise pollution, and (6) hazards to public health and safety;

(i) All pertinent information or data which the authorized officer may require for proper and timely consideration of the plan of operation for the exploration, development, or utilization of geothermal resources and the protection of the environment;

(j) Provisions for monitoring to ensure that operations under the plan are conducted in compliance with the applicable regulations and GRO orders; and

(k) Provisions for collecting data concerning the existing air and water quality, noise, seismic and subsidence activities, and ecological systems of the leased lands for a period of at least 1 year prior to production with some of the collection to be continued during production and abandonment.

The authorized officer may reduce the data collection requirements of paragraph (k) of this section, including the duration of data collection, commensurate with the level of potential environmental impacts from proposed projects. The information required for paragraphs (a) through (f) of this section may be shown on a map or maps available from State or Federal sources, provided that the scale of such map(s) is acceptable to the authorized officer. All documents submitted to the authorized officer as part of or in support of a plan of operation shall be made available to interested parties for review, with the exception of those data which are subject to the provisions of § 3264.5 of this title. Upon receipt of any plan of operation, the authorized officer shall take such measures as are appropriate to notify the Geothermal Environmental Advisory Panel, appropriate Federal, State, and local agencies, and interested members of the public, of the availability of the plan for review.

[43 FR 13833, Mar. 31, 1978, as amended at 44 FR 37590, June 27, 1979; 47 FR 24130, June 3, 1982. Redesignated and amended at 48 FR 44788, 44790, Sept. 30, 1983, further amended at 53 FR 17374, May 16, 1988]

§ 3262.4-1 Plan of utilization.

At any time after the issuance of a Federal geothermal lease, the operating rights owner, operator, licensee, or facility operator may conduct preliminary soil tests or studies necessary for determining those site(s) on the lease which are most suitable for the construction of a proposed utilization facility. Those site investigations that involve trenching or the construction of additional roads will require the prior written approval of the authorized officer and the appropriate surface management agency. Unless already authorized under an approved plan of operation, the operating rights owner, licensee, or facility operator must submit in triplicate to the authorized officer a plan of utilization and obtain the approval of the authorized officer and the appropriate surface management agency prior to commencing any site preparation, road construction, or facility construction. A plan of utilization shall include, as appropriate:

(a) A description and/or plans for all proposed structures and facilities (other than proprietary data which may be submitted under § 3264.2-1 of this title) to be constructed, erected, or located on the lease, including other support facilities or ancillary equipment. This portion of the plan should include:

(1) A contour map showing the facility location(s);

(2) A description of the purpose and operation of each facility;

(3) A schematic flow diagram;

(4) A plan for architectural landscaping;

(5) A startup date and a schedule for the construction activities;

(6) The planned safety provisions for emergency shutdown to protect public health and safety and for protection of the environment, including a schedule for the testing and maintenance of safety devices; and

(7) The planned manpower coverage to be provided during the operation of the facility.

(b) A copy of all site evaluation studies, soil reports, core logs, or laboratory reports which have been prepared for the site(s).

(c) A description of any additional tests, studies, or surveys which are planned to assess the geologic suitability of the site(s). A separate approval of any such tests, studies, or surveys may be granted by the authorized officer prior to the approval of the overall plan of utilization.

(d) A map showing the existing and planned access and lateral roads and the source of any road building material to be utilized.

(e) The source, quality, and proposed consumption rate of the water supply to be utilized.

(f) The identification of all other areas of potential surface disturbance.

(g) The methods for disposing of waste water, solid wastes, and noncondensible gases.

(h) A narrative statement describing the proposed measures to be taken in protecting the environment including, but not limited to, the prevention or control of (1) fires, (2) soil erosion, (3) pollution of the surface or groundwater, (4) damage to fish and wildlife, cultural resources, or other natural resources, (5) air and noise pollution, and (6) hazards to public health and safety during normal operations. This portion of the plan should also detail the procedures to be followed in complying with all existing applicable Federal requirements and pertinent State and local standards.

(i) The provisions made for monitoring facility operations to assure continuing compliance with applicable noise, air, and water quality standards and regulations under this part, and for other potential environmental impacts identified by the authorized officer. The operating rights owner, licensee, or facility operator shall be responsible for the monitoring of readily identifiable localized environmental impacts associated with the specific activities that are under their respective control.

(j) Any additional information or data which the authorized officer may require in support of the plan of utilization.

(k) A narrative statement describing, as appropriate, the method for the timely abandonment of the utilization facilities when no longer needed and the site restoration procedures to be conducted pursuant to the applicable provisions of the lease, GRO Orders, the regulations in this part, and the regulations in this group.

All documents submitted to the authorized officer as part of or in support of a plan of utilization shall be made available to interested parties for review, with the exception of those data which are subject to the provisions of § 3264.5 of this title. Upon receipt of any plan of utilization, the authorized officer shall take such measures as are appropriate to notify the Geothermal Environmental Advisory Panel, appropriate Federal, State, and local agencies, and interested members of the public, of the availability of said plan for review.

[44 FR 37590, June 27, 1979. Redesignated and amended at 48 FR 44788, 44790, Sept. 30, 1983, further amended at 53 FR 17374, May 16, 1988]

§ 3262.4-2 Subsequent well operations, construction of new production facilities, and alteration of existing production facilities.

After completion of all operations authorized under any previously approved notice, permit, or plan, the operator shall not begin a subsequent well operation, the construction of a new production facility, or the alteration of an existing production facility until the authorized officer has, as a minimum, approved the proposed operation as described by the operator in a sundry notice or other appropriate permit application. Subsequent well operations that may be approved without a new or supplemental plan of operation include those operations to redrill, repair, deepen, plug back, shoot, or plug and abandon any well; make casing tests, alter the casing or liner, stimulate production, or change the method of recovering production; or convert any formation or well for brine or fluid injection and which can be conducted without additional surface disturbance. The construction of a new production facility or the alteration of an existing production facility, which may be approved without a new or supplemental plan of operation, includes those where (a) the facility involved is related to the production of geothermal resources and not to the utilization thereof; (b) the site of the proposed construction or alteration activity is within a surface use area designated for that purpose in a plan of operation previously approved by the authorized officer and the appropriate land management agency; and (c) the construction or alteration can be performed without additional surface disturbance. When required by the authorized officer, pursuant to the regulations in this part, the operator shall obtain the joint approval of the authorized officer and the appropriate land management agency for a new or supplemental plan of operation before commencing subsequent well operations, the construction of a new production facility, or the alteration of an existing production facility. In an emergency, an operator may take action to prevent damage without receiving the prior approval of the authorized officer, but, in such cases, the operator shall promptly report to the authorized officer the corrective actions taken.

[43 FR 13834, Mar. 31, 1978. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.5 Well designations.

The operator shall mark each derrick upon commencement of drilling operations and each producing or suspended well in a conspicuous place with his name or the name of the operator, the serial number of the lease, the number and location of the well. Whenever possible, the well location shall be described by section or tract, township, range, and by quarter-quarter section or lot. The operator shall take all necessary means and precautions to preserve these markings.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.5-1 Well records.

(a) The operator shall keep for each well at his field headquarters or at other locations conveniently available to the authorized officer, accurate and complete records of all well operations including production, drilling, logging, directional well surveys, casing, perforation, safety devices, redrilling, deepening, repairing, cementing, alterations to casing, plugging, and abandoning. The records shall contain a description of any unusual malfunction, condition or problem; all the formations penetrated; the content and character of mineral deposits and water in each formation; thermal gradients, temperatures, pressures, analyses of geothermal waters, the kind, weight, size, grade, and setting depth of casing: and any other pertinent information.

(b) The operator shall, within 30 days after completion of any well, transmit to the authorized officer copies of the records of all operations in a form prescribed by the authorized officer.

(c) Upon request of the authorized officer, the operator shall furnish (1) legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, electrical and temperature logs, chemical analyses of steam and waters, or other similar services; (2) other reports and records of operations in the manner and form prescribed by the authorized officer.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.5-2 Samples, tests, and surveys.

(a) The operator, when required by the authorized officer, will make adequate sampling, tests and/or surveys using acceptable techniques, to determine the presence, quantity, quality, and potential of geothermal resources, mineral deposits, or water; the amount and direction of deviation of any well from the vertical; and/or formation temperatures and pressures, casing, tubing, or other pressures and such other facts as the authorized officer may require. Such tests or surveys shall be made without cost to the lessor.

(b) The operator shall, without cost to the lessor, take such formation samples or cores to determine the identity and character of any formation as are required and prescribed by the authorized officer.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.5-3 Directional survey.

The authorized officer may require an angular deviation and directional survey to be made of the finished hole of each directionally drilled well. The survey shall be made at the risk and expense of the operator unless requested by an offset operating rights owner or operator, and then, at the risk and expense of the offset party. A copy of the survey shall be furnished the authorized officer.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.5-4 Well control.

The operator shall: (a) Take all necessary precautions to keep all wells under control at all times; (b) utilize trained and competent personnel; (c utilize properly maintained equipment and materials; and (d) use operating practices which insure the safety of life and property. The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers, and other surface control equipment and materials, casing and cementing programs, etc., to be used shall be based on sound engineering principles and shall take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1983]

§ 3262.5-5 Well abandonment.

The operator shall promptly plug and abandon any well on the leased land that is not used or useful. No well shall be abandoned until its lack of capacity for further profitable produ tion of geothermal resources has been demonstrated to the satisfaction of the authorized officer. Before abandoning a producible well, the operator shall submit to the authorized officer a statement of reasons for abandonment and his detailed plans for carrying on the necessary work. The detailed plans shall provide for the preservation of fresh water aquifers and for the prevention of intrusion into such aquifers of saline or polluted waters. A producible well may be abandoned only after receipt of written approval by the authorized officer. No well shall be plugged and abandoned until the manner and method of plugging have been approved or prescribed by the authorized officer. Equipment shall be removed, and premises at the well site shall be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the authorized officer. Drilling equipment shall not be removed from any suspended drilling well without taking adequate measures to close the well and protect the subsurface resources.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.6 Pollution.

The operator shall comply with all Federal and State standards with respect to the control of all forms of air, land, water, and noise pollution, including, but not limited to, the control of erosion and the disposal of liquid, solid, and gaseous wastes. The authorized officer may, in his discretion, establish additional and more stringent standards, and, if he does so, the operator shall comply with those standards. Plans for disposal of well effluents must take into account effects on surface and subsurface waters, plants, fish and wildlife and their habitats, atmosphere, or any other effects which may cause or contribute to pollution, and such plans must be approved by the authorized officer before action is taken under them.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.6-1 Noise abatement.

The operator, licensee, or facility operator, as appropriate, shall minimize noise during exploration, development, production, and utilization operations. The welfare of the operating personnel and the public must not be affected adversely as a consequence of the noise created by expanding gases. The method and degree of noise abatement shall be as prescribed or approved by the authorized officer.

[44 FR 37590, June 27, 1979. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.6-2 Land subsidence and seismic activity.

In the event subsidence or seismic activity results from the production of geothermal resources, as determined by monitoring activities by the operator or a government body, the operator shall take such action as required by the lease or by the authorized officer.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.6-3 Pits and sumps.

The operator shall provide and use pits and sumps of adequate capacity and design to retain all materials and fluids necessary to drilling, production, or other operations unless otherwise specified by the authorized officer. In no event shall the contents of a pit or sump be allowed to: (a) Contaminate streams, artificial canals or waterways, ground waters, lakes or rivers; (b) adversely affect environment, persons, plants, fish and wildlife and their habitats; or (c) damage the aesthetic values of the property or adjacent properties. When no longer needed, pits and sumps are to be filled and covered and the premises restored to a near natural state, as prescribed by the authorized officer.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.7 Accidents.

The operator shall take all reasonable precautions to prevent accidents and shall notify the authorized officer within 24 hours of all accidents on the leased land, and shall submit a full report thereon within 15 days.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.7-1 Workmanlike operations.

The operator shall carry on all operations and maintain the property at all times in a workmanlike manner, having due regard for the conservation of the property and the environment and for the health and safety of employees. The operator shall remove from the property or store, in an orderly manner, all scrap or other materials not in use.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3262.8 Departure from orders.

The authorized officer may prescribe or approve either in writing or orally, with prompt written confirmation, variances from the requirements of GRO orders and other orders issued pursuant to these regulations, when such variances are necessary for the proper control of a well, conservation of natural resources, protection of human health and safety, property, or the environment. The authorized officer shall inform appropriate Federal and State agencies, of any action taken under this section.

§ 3262.9 Pilot operations or facility testing.

With respect to the pilot operations or facility testing of those utilization facilities in accordance with the provisions of 30 U.S.C. 1012, the authorized officer may approve the suspension, waiver or reduction of the royalty obligation for a period not to exceed 120 days of net operation upon application therefor. No form of relief from the royalty requirements of a lease will be approved where the geothermal resources and/or the output of the facility would be used commercially or sold during said period. In addition, no application in this respect will be approved in the absence of a determination by the authorized officer that the payment of royalty during this period would affect adversely the development and recovery of the resources and that the action would be in the interest of conservation, would encourage the greatest ultimate recovery of geothermal resources and is necessary in order to promote development or to ensure that the lease can be operated successfully under the lease terms. Each application for relief hereunder shall be filed in triplicate with the authorized officer and, as a minimum shall:

(a) Indentify the facility, its location and the facility operator;

(b) Provide the serial number(s) of the lease(s) from which the geothermal resources are produced and the name(s) of the current lessee(s) and/or operator(s);

(c) Contain the number and location of each well which will be utilized during the pilot or testing operation of the facility and the estimated daily volumes of geothermal resources to be produced of each such well;

(d) Furnish a detailed statement of the estimated costs associated with the pilot or testing operations; and

(e) Supply other appropriate documentation to support the contention that relief from royalty requirements of the lease would be in accordance with the provisions of 30 U.S.C. 1012, as set forth in the preceding paragraph.

[48 FR 44790, Sept. 30, 1983]

Subpart 3263—Measurement of Production

§ 3263.1 Measurement of geothermal resources.

The operator shall measure or gauge all production in accordance with methods approved by the authorized officer. The quantity and quality of all production shall be determined in accordance with the standard practices, procedures, and specifications generally used in industry. All measuring equipment shall be tested periodically and if found defective, the authorized officer will determine the quantity and quality of production from the best evidence available.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3263.2 Determination of content of byproducts.

The operator shall periodically furnish the authorized officer the results of periodic tests showing the content of byproducts in the produced geothermal fluid and gases. Such tests shall be taken as specified by the authorized officer and by the method of testing approved by him.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3263.3 Commingling production.

The authorized officer may authorize an operator to commingle production from wells on a lease with production from other leases subject to such conditions as may be prescribed.

[53 FR 17374, May 16, 1988]

Subpart 3264—Reports To Be Made by All Lessees

§ 3264.1 General requirements.

(a) Information required to be submitted in accordance with the regulations in this part shall be furnished as directed by the authorized officer. Copies of forms can be obtained from the authorized officer and must be filed with that official within the time limit prescribed.

(b) When forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the authorized officer.

§ 3264.2 Application for permit to drill, redrill, deepen, or plug-back.

(a) A permit to drill, redrill, deepen, or plug-back a well on Federal lands must be obtained from the authorized officer before the work is begun. The application for the permit, which shall be filed in triplicate with the authorized officer, shall state the location of the well in feet, and direction from the nearest section or tract lines as shown on the official plat of survey or protracted surveys; the altitude of the ground and derrick floor above sea level and how it was determined, and should be accompanied by a proposed plan of operations as required by these regulations.

(b) The proposed drilling and casing plan shall be outlined in detail under the heading "Details of Work" in the applications referred to herein, and shall describe the type of tools and equipment to be used, the proposed depth to which the well will be drilled, the estimated depths to the top of important markers, the estimated depths at which water, geothermal resources, or other mineral resources are expected, the proposed casing program (including the size and weight of casing), the depth at which each string is to be set, and the amount of cement and mud to be used, the drilling method and type of circulating media (water, mud, foam, air or combinations thereof), the type of blowout prevention equipment to be used, the proposed coring, logging, or other program (such as drilling time log and sample description) to be used to determine the formations penetrated and the proposed program for determining geothermal gradients and the sampling and analysis of geothermal resources.

(c) Each application shall be accompanied by a plat showing the surface and expected bottomhole locations and the distances from the nearest section or tract lines as shown on the official plat of survey or protracted surveys. The scale shall not be less than 2,000 feet to 1 inch.

(d) Each application should be accompanied by supporting structural and hydrologic information based on available geologic and geophysical data.

§ 3264.2-1 Application for utilization permit.

(a) A permit to construct and operate an individual production well facility of not more than 10-megawatt net capacity or heat energy equivalent, including all related on-lease facilities, must be obtained from the authorized officer prior to commencing surface disturbing activities related to the construction and operation of each such facility. The application for a permit in this respect shall be filed in triplicate with the authorized officer and must state the location of the principal facility and all related sites by distance in meters and direction from the nearest section or tract lines, as shown on the official plat of survey or protracted surveys, and the elevation of the ground level at these sites. The application must be accompanied by a proposed plan of utilization, as required by § 3262.4-1 of this title. All individual well production facilities must be constructed and operated in accordance with the requirements of the regulations in this group and any other applicable regulations.

(b) A permit to construct and operate a research and demonstation facility (involving one or more wells) of not more than 20-megawatt net capacity or heat energy equivalent, including all related on-lease facilities, must be obtained from the authorized officer prior to commencing any surface disturbing activities related to the construction or operations of each such facility. The application for a permit in this respect shall be filed in triplicate with the authorized officer and must state the location of the principal facility and all related sites by distance in meters and direction from the nearest section or tract lines, as shown on the official plat of survey or protracted surveys, and the elevation of the ground level at these sites. The application must be accompanied by a proposed plan of utilization, as required by § 3262.4-1 of this title. Any permit issued for a research and demonstration facility shall be for an initial term of not more than 5 years from the date that the facility becomes operational. All research and demonstration facilities must be constructed and operated in accordance with the requirements of the regulations in this part, 43 CFR Group 3200, and other applicable regulations. The continued beneficial use of a research and demonstration facility beyond the initial term provided by any such permit, or the conversion of the facility to a plant facility at that time or at any time during the initial permit period, will require that a license be obtained from the responsible officer of the surface managing agency pursuant to the regulations in this group.

(c) A permit to construct and operate any plant facility, other than as provided in paragraph (a) or (b) of this section, including all related on-lease facilities, must be obtained from the authorized officer prior to commencing any surface disturbing activities related to the construction or operation of each such facility. If the proposed plant facility is to have an output of greater than 20-megawatt net capacity, or heat energy equivalent, the facility operator must also obtain a license or such other permit as may be required pursuant to the regulations in this group. The application for a permit in this respect shall be filed in triplicate with the authorized officer and must state the location of the principal facility and all related sites by distance in meters and direction from the nearest section or tract lines, as shown on the official plat of survey or protracted surveys, and the elevation of the ground level at these sites. The application must be accompanied by a proposed plan of utilization, as required by § 3262.4-1 of this title. All plant facilities must be constructed and operated in accordance with the requirements of the regulations in this group and any other applicable regulations.

(d) Each application filed with the authorized officer for a permit to construct and operate a facility, as set forth in paragraph (a), (b), or (c) of this section, shall identify specifically the type of facility contemplated, the method of operation, and shall include:

(1) Designs, plans, and specifications for all improvements to be constructed or located at the principal facility site and at each related facility site in sufficient detail to permit a technical review for the purpose of determining that operational and design safety factors are adequate and that there will be compliance with all applicable regulatory and statutory requirements;

(2) An operating plan for the facility setting forth the procedures and standards pursuant to which the facility will be operated;

(3) The manner of metering facility input and output to determine plant

performance and, when appropriate, to assure the proper calculation of the royalty value due;

(4) A schedule for the installation and pre-startup testing of all facility equipment and, if known, for the commencement of operations for the commerical utilization of geothermal resources; and

(5) Any additional pertinent information or data which the authorized officer may require for the proper consideration of the application.

(e) Except as permitted by the access provisions of the lease, transmission facilities (lines and substations) and roads or pipelines located on off-lease Federal surface will require that appropriate permits be obtained. In the event that a Federal agency, other than the Bureau of Land Management, has jurisdiction over all or a portion of the affected off-lease Federal surface, the necessary right-of-way permits must be obtained from that agency.

(f) When the construction and/or operation of a facility requires licensing or permitting by local, State, or Federal agencies (other than the Federal surface management agency), three copies of each such permit and/or license shall be submitted prior to the commencement of these activities.

(g) Where complete detailed engineering plans for all components or a utilization facility are not available at the time of the initial submission of an application for a utilization permit, the authorized officer may grant staged approval of separate components or phases of construction by means of a Sundry Notice or other appropriate permit.

(h) Prior to the actual operation of the facility, all equipment and prestartup test results must be approved by the authorized officer. In addition, any utilization facility approved pursuant to this part may not be placed in operation, except for approved test periods, until an acceptable plan of production has been filed with and approved by the authorized officer.

[44 FR 37591, June 27, 1979. Redesignated and amended at 48 FR 44788, 44791, Sept. 30, 1983]

§ 3264.2-2 Sundry notices and reports on wells.

(a) Any written notice of intention to do work or to change plans previously approved must be filed with the authorized officer in triplicate, unless otherwise directed, and must be approved by him before the work is begun. If, in case of emergency, any notice is given orally or by wire, and approval is obtained, the transaction shall be confirmed in writing. A subsequent report of the work performed must also be filed with the authorized officer.

(b) Casing test: Notice shall be given in advance to the authorized officer or his representative of the date and time when the operator expects to make a casing test. Later, by agreement, the exact time shall be fixed. In the event of casing failure during the test, the casing must be repaired or replaced or recemented as required by the authorized officer or his representative. The results of the test must be reported within 30 days after making a casing test. The report must describe the test completely and state the amount of mud and cement used, the lapse of time between running and cementing the casing and making the test, and the method of testing.

(c) Repairs or conditioning of well: Before the repairing or conditioning of a well, a notice setting forth in detail the plan of work must be filed with, and approved by, the authorized officer. A detailed report of the work accomplished and the methods employed, including all dates, and the results of such work must be filed within 30 days after completion of the repair work.

(d) Well stimulation: Before the operator commences stimulation of a well by any means, a notice, setting forth in detail the plan of work, must be filed with and approved by the authorized officer. The notice shall name the type of stimulant and the amount to be used. A report showing the amount of stimulant used and the production rate before and after stimulation must be filed within 30 days from completion of the work.

(e) Altering casing in a well: Notice of intention to run a liner or to alter the casing by pulling or perforating by any means must be filed with and approved by the authorized officer before the work is started. This notice shall set forth in detail the plan of work. A report must be filed within 30 days after completion of the work stating exactly what was done and the results obtained.

(f) Notice of intention to abandon well: Before abandonment work is begun on any well, whether a drilling well, geothermal resources well, water well, or so-called dry hole, notice of intention to abandon shall be filed with, and approved by, the authorized officer. The notice must be accompanied by a complete log, in duplicate, of the well to date, provided the complete log has not been filed previously, and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), plans for mudding, cementing, shooting, testing, and removing casing, and any other pertinent information.

(g) Subsequent report of abandonment: After a well is abandoned or plugged, a subsequent record of work done must be filed with the authorized officer. This report shall be filed separately within 30 days after the work is done. The report shall give a detailed account of the manner in which the abandonment or plugging work was carried out, including the nature and quantities of materials used in plugging and the location and extent (by depths) of the plugs of different materials; records of any tests or measurements made, and of the amount, size, and location (by depths) of casing left in the well; and a detailed statement of the volume of mud fluid used, and the pressure attained in mudding. If an attempt was made to part any casing, a complete report of the methods used and results obtained must be included.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

§ 3264.2-3 Log and history of well.

The operator shall furnish in duplicate to the authorized officer, not later than 30 days after the completion of each well, a complete and accurate log and history, in chronological order, of all operations conducted on the well. A log shall be compiled for geologic information from cores or formations samples and duplicate copies of such log shall be filed. Duplicate copies of all electric logs, temperature surveys, water and steam analyses, hydrologic or heat flow tests, or direction surveys, if run, shall be furnished.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17375, May 16, 1988]

§ 3264.2-4 Monthly report of operations.

A report of operations for each lease must be made for each calendar month, beginning with the month in which drilling operations are initiated. The report must be filed in duplicate with the authorized officer on or before the last day of the month following the month for which the report is filed unless an extension of time for the filing of the report is granted by the authorized officer. The report shall disclose accurately all operations conducted on each well during the month, the status of operations on the last day of the month, and a general summary of the status of operations on the leased lands. The report must be submitted each month until the lease is terminated or until omission of the report is authorized by the authorized officer. The report shall show for each calendar month:

(a) The lease serial number or the unit or communitization agreement number which shall be inserted in the upper right corner;

(b) Each well listed separately by number, and its location by 40-acre subdivision (quarter-quarter section or lot), section number, township, range, and meridian;

(c) The number of days each well was produced, whether steam or hot water or both were produced, and the number of days each input well was in operation, if any;

(d) The quantity of production and any byproducts obtained from each well, if any are recovered;

(e) The depth of each active or suspended well, and the name, character, and depth of each formation drilled during the month, the date and reason for every shutdown, the names and depths of important formation changes, the amount and size of any casing run since the last report, the dates and results of any tests or environmental monitoring conducted, and any other noteworthy information on operations not specifically provided for in the form.

(f) The footnote must be completely filled out as required by the authorized officer. If no sales were made during the calendar month, the report must so state.

§ 3264.2-5 Monthly report of facility operations.

A report of operations for each individual production well facility, research and demonstration facility, or plant facility must be made by the facility operator for each calendar month beginning with the month in which operations are first commenced. The report must be filed in duplicate with the authorized officer on or before the last day of the month following the month for which the report is filed, unless an extension of time for filing is granted specifically in writing by the authorized officer.

(a) For each utilization facility, the report shall show, as applicable, for each calendar month:

(1) The lease serial number(s) or the unit or communitization agreement number covering the lands from which geothermal resources were produced and utilized at the facility;

(2) The output of the facility expressed as the number of kilowatt hours (gross and net output) of electricity generated or, when appropriate, as the heat energy equivalent thereof and the value of such output;

(3) The quantities (mass) of geothermal resources entering the plant and the average intake temperature and pressure;

(4) The quantity of water utilized from sources other than the produced geothermal resources;

(5) The total quantity (mass), temperature, and pressure of the plant effluent (waste water); and

(6) A detailed statement as to the reason or reasons for any suspension of facility operations during the month.

[44 FR 37592, June 27, 1979. Redesignated at 48 FR 44788, Sept. 30, 1983]

§ 3264.3 Report of expenditures for diligent exploration operations.

For exploration expenditures to be considered for qualification as diligent exploration under 43 CFR 3203.5, the operator shall submit to the authorized officer a report of the expenditures no later than 60 days after the end of a lease year if the expenditures are to be credited for that lease year or future lease years.

[47 FR 24130, June 3, 1982. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17375, May 16, 1988]

§ 3264.4 Public inspection of records.

Geologic and geophysical interpretations, maps, and data required to be submitted under this part shall not be available for public inspection without the consent of the operating rights owner or operator, as appropriate, so long as the lease remains in effect.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, further redesignated and amended at 53 FR 17375, May 16, 1988]

Subpart 3265—Procedure in Case of Violation of the Regulations or Lease Terms

§ 3265.1 Noncompliance with regulations or lease terms.

(a) Whenever an operating rights owner, operator, or anyone acting under his/her authority fails to comply with the provisions of the regulations or lease terms, the authorized officer shall give notice to remedy any defaults or violations. Failure by the party to perform or commence the necessary remedial action pursuant to the notice may result in a shut down of operations and may also result in cancellation of the lease pursuant to § 3244.3 of this title.

(b) The authorized officer is authorized to shut down any operations which he determines are unsafe or are causing or can cause pollution.

[38 FR 35068, Dec. 21, 1973. Redesignated and amended at 48 FR 44788, 44792, Sept. 30, 1983, further amended at 53 FR 17375, May 16, 1988]

Subpart 3266—Appeals

§ 3266.1 Appeals.

Appeals from final orders or decisions issued under the regulations in this part shall be made in the manner provided in Part 4 of this title.

[48 FR 44792, Sept. 30, 1983]

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS: UNPROVEN AREAS

NOTE: Many existing unit agreements specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager in the body of the agreements, as well as reference to title 30 CFR part 270 or specific sections thereof. Those references must now be read in the context of the provisions of Secretarial Order 3087 and now mean the Bureau of Land Management or the Minerals Management Service as appropriate.

Subpart 3280—Geothermal Resources Unit Agreements: General

Sec.
3280.0-1 Purpose.
3280.0-2 Policy.
3280.0-3 Authority.
3280.0-5 Definitions.

Subpart 3281—Application for Unit Agreement

3281.1 Preliminary consideration of agreements.
3281.2 Designation of area.
3281.3 Parties to unit or cooperative agreement.
3281.4 State land.

Subpart 3282—Qualification of Unit Operator

3282.1 Qualifications of unit operator.

Subpart 3283—Filing and Approval of Documents

3283.1 Filing of documents and number of counterparts.
3283.2 Executed agreement:
3283.2-1 Approval of executed agreement.
3283.2-2 Review of executed agreement.
3283.3 Participating area.
3283.4 Plan of development.
3283.5 Return of approved documents.

Subpart 3284—[Reserved]

Subpart 3285—Appeals

3285.1 Appeals.

Subpart 3286—Model Forms

3286.1 Model unit agreement: unproven areas.
3286.1-1 Model Exhibit "A".
3286.1-2 Model Exhibit "B".
3286.2 Model unit bond.
3286.3 Model designation of successor operator.
3286.4 Model change of operator by assignment.

AUTHORITY: Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

SOURCE: 38 FR 35073, Dec. 21, 1973, unless otherwise noted. Redesignated at 48 FR 44792, Sept. 30, 1983.

EDITORIAL NOTES:

NOTE 1: See Redesignation Table No. 4 appearing in the Finding Aids section of this volume.

NOTE 2: Nomenclature changes to this part appear at 47 FR 28370, June 30, 1982; 48 FR 44792, Sept. 30, 1983.

Subpart 3280—Geothermal Resources Unit Agreements: General

§ 3280.0-1 Purpose.

The regulations in this part prescribe the procedure to be followed and the requirements to be met by holders of Federal geothermal leases and their representatives who wish to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan for the development of any geothermal resources pool, field or like area, or any part thereof.

[48 FR 44792, Sept. 30, 1983]

§ 3280.0-2 Policy.

Cooperative or unit agreements for the development of any geothermal resources pool, field or like area, or any part thereof, may be initiated by lessees, or where such agreements are deemed necessary in the interest of conserving natural resources, they may be required by the Director.

[48 FR 44792, Sept. 30, 1983]

§ 3280.0–3 Authority.

These regulations are issued under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025) and Order Number 3087, dated December 3, 1982, as amended February 7, 1983 (48 FR 8983), under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the leasing of restricted Indian lands, to the Bureau of Land Management.

[48 FR 44792, Sept. 30, 1983]

§ 3280.0–5 Definitions.

The following terms, as used in this part or in any agreement approved under the regulations in this part, shall have the meanings here indicated unless otherwise defined in such agreement:

(a) *Unit agreement.* An agreement or plan of development and operation for the production and utilization of separately owned interests in the geothermal resources made subject thereto as a single consolidated unit without regard to separate ownerships and which provides for the allocation of costs and benefits on a basis defined in the agreement or plan.

(b) *Cooperative agreement.* An agreement or plan of development and operations for the production and utilization of geothermal resources made subject thereto in which separate ownership units are independently operated without allocation of production.

(c) *Agreement.* For convenience, the term "agreement" as used in the regulations in this part refers to either a unit or a cooperative agreement as defined in paragraphs (a) and (b) of this section unless otherwise indicated.

(d) *Unit area.* The area described in a unit agreement as constituting the land logically subject to development under such agreement.

(e) *Unitized land.* The part of a unit area committed to a unit agreement.

(f) *Unitized substances.* Deposits of geothermal resources recovered from unitized land by operation under and pursuant to a unit agreement.

(g) *Unit operator.* The person, association, partnership, corporation, or other business entity designated under a unit agreement to conduct operations on unitized land as specified in such agreement.

(h) *Participating area.* That part of the Unit Area which is deemed to be productive from a horizon or deposit and to which production would be allocated in the manner described in the unit agreement assuming that all lands are committed to the unit agreement.

(i) *Working interest.* The interest held in geothermal resources or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in a unit or cooperative agreement, the owner of such interest is vested with the right to explore for, develop, produce, and utilize such resources. The right delegated to the unit operator as such by the unit agreement is not to be regarded as a working interest.

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, Sept. 30, 1983]

Subpart 3281—Application for Unit Agreement

§ 3281.1 Preliminary consideration of agreements.

The form of unit agreement set forth in § 3286.1 of this title is acceptable for use in unproved areas. The use of this form is not mandatory, but any proposed departure therefrom should be submitted with the application submitted under § 3281.2 of this title for preliminary consideration and for such revision as may be deemed necessary. In areas proposed for unitization in which a discovery of geothermal resources has been made, or where a cooperative agreement is contemplated, the proposed agreement should be submitted with the application submitted under § 3281.2 of this title for preliminary consideration and for such revision as may be deemed necessary. The proposed form of agreement should be submitted in triplicate and should be plainly marked to identify the proposed variances from the form of agreement set forth in § 3286.1 of this title.

§ 3281.2 Designation of area.

An application for designation of an area as logically subject to development and/or operation under a unit or cooperative agreement may be filed, in triplicate, by any proponent of such an agreement through the authorized officer. Each copy of the application shall be accompanied by a map or diagram on a scale of not less than 1 inch to 1 mile, outlining the area sought to be designated under this section. The Federal, State, and privately owned land should be indicated on said map by distinctive symbols or colors and Federal geothermal leases and lease applications should be identified by serial number. Geological information, including the results of geophysical surveys, and such other information as may tend to show that unitization is necessary and advisable in the public interest should be furnished in triplicate. Geological and geophysical information and data so furnished will not be available for public inspection, as provided by 5 U.S.C. 552(b), without the consent of the proponent. The application and supporting data will be considered by the Director and the applicant will be informed of the decision reached. The designation of an area, pursuant to an application filed under this section, shall not create an exclusive right to submit an executed agreement for such area, nor preclude the inclusion of such area or any part thereof in another unit area.

§ 3281.3 Parties to unit or cooperative agreement.

The owners of any rights, title, or interest in the geothermal resources deposits to be developed and operated under an agreement can be regarded as proper parties to a proposed agreement. All such owners must be invited to join as parties to the agreement. If any owner fails or refuses to join the agreement, the proponent of the agreement should declare this to the authorized officer and should submit evidence of efforts made to obtain joinder of such owner and the reasons for nonjoinder.

§ 3281.4 State land.

Where State-owned land is to be included in the unit, approval of the agreement by appropriate State officials should be obtained prior to its submission to the Department for approval of the executed agreement. When authorized by the laws of the State in which the unitized land is situated, provisions may be made in the agreement accepting State law, to the extent that they are applicable to non-Federal unitized land.

Subpart 3282—Qualification of Unit Operator

§ 3282.1 Qualifications of unit operator.

A unit operator must qualify as to citizenship in the same manner as those holding interests in geothermal leases issued under the Geothermal Steam Act of 1970. The unit operator may be an owner of a working interest in the unit area or such other party as may be selected by the owners of working interests and approved by the authorized officer. The unit operator shall execute an acceptance of the duties and obligations imposed by the agreement. No designation of, or change in, a unit operator will become effective unless and until approved by the authorized officer, and no such approval will be granted unless the unit operator is deemed qualified to fulfill the duties and obligations prescribed in the agreement.

Subpart 3283—Filing and Approval of Documents

§ 3283.1 Filing of documents and number of counterparts.

All proposals and supporting papers, instruments and documents submitted under this part shall be filed with the authorized officer, unless otherwise provided in this part or otherwise instructed by the Director.

[48 FR 44793, Sept. 30, 1983]

§ 3283.2 Executed agreement.

(a) Where a duly executed agreement is submitted for Departmental approval, a minimum of 6 signed counterparts shall be filed. The same number of counterparts shall be filed for documents supplementing, modifying or amending an agreement, including change of operator, designation of a new operator and notice of surrender, relinquishment or termination.

(b) The address of each signatory party to the agreement shall be inserted below the party's signature. Each signature shall be attested to by at least 1 witness, if not notarized. Corporate or other signatures made in a representative capacity shall be accompanied by evidence of the authorization of the signatories to act unless such evidence is already a matter of record in the Bureau of Land Management. (The parties may execute any number of counterparts of the agreement with the same force and effect as if all parties signed the same document, or may execute a ratification of consent in a separate instrument with like force and effect.)

(c) Any modification of an approved agreement shall require approval of the Secretary or his/her duly authorized representative under procedures similar to those cited in § 3283.2-1 of this title.

[48 FR 44793, Sept. 30, 1983]

§ 3283.2-1 Approval of executed agreement.

A duly executed unit or cooperative agreement shall be approved by the Secretary or his/her duly authorized representative upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of properly conserving the natural resources, taking into account the environmental consequences of the action. Such approval shall be incorporated in a certificate appended to the agreement. No such agreement shall be approved unless at least 1 of the parties is a holder of a Federal lease embracing lands being committed to the agreement and unless the parties signatory to the agreement hold sufficient interests in the area to give effective control of operations therein.

[48 FR 44793, Sept. 30, 1983]

§ 3283.2-2 Review of executed agreement.

No more than 5 years after approval of any cooperative or unit plan of development or operation, and at least every 5 years thereafter, the authorized officer shall review each plan and, after notice and opportunity for comment, eliminate from such plan any lease or part of a lease not regarded as reasonably necessary for cooperative or unit operations under the plan. Such elimination shall be based on scientific evidence, and shall occur only when it is determined by the authorized officer to be for the purpose of conserving and properly managing the geothermal resource.

[54 FR 13887, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

§ 3283.3 Participating area.

Each application for approval of a participating area, or revision thereof, shall be accompanied by 3 copies of a substantiating geologic and engineering report, structure contour map(s), cross-section or other pertinent data.

[48 FR 44793, Sept. 30, 1983]

§ 3283.4 Plan of development.

Plans of development and operation, plans of further development and operation and proposed participating areas and revisions thereof shall be submitted in quadruplicate.

[48 FR 44793, Sept. 30, 1983]

§ 3283.5 Return of approved documents.

All instruments or documents other than plans of development and operation, plans of further development and operation and proposed participating areas and revisions thereof submitted for approval shall be submitted for approval in sufficient number to permit the approving official to return at least 1 approved counterpart.

[48 FR 44793, Sept. 30, 1983]

Subpart 3284—[Reserved]

Subpart 3285—Appeals

§ 3285.1 Appeals.

Appeals from final orders or decisions issued under the regulations in this part shall be made in the manner provided in Part 4 of this title.

Subpart 3286—Model Forms

§ 3286.1 Model unit agreement: unproven areas.

UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE ——————— UNIT AREA COUNTY OF ———————————, STATE OF ———————————

TABLE OF CONTENTS

Article	
I	Enabling Act and regulations.
II	Definitions.
III	Unit area and exhibits.
IV	Contraction and expansion of unit area.
V	Unitized land and unitized substances.
VI	Unit operator.
VII	Resignation or removal of unit operator.
VIII	Successor unit operator.
IX	Accounting provisions and unit operating agreement.
X	Rights and obligations of unit operator.
XI	Plan of operation.
XII	Participating areas.
XIII	Allocation of unitized substances.
XIV	Relinquishment of leases.
XV	Rentals and minimum royalties.
XVI	Operations on nonparticipating land.
XVII	Leases and contracts conformed and extended.
XVIII	Effective date and term.
XIX	Appearances.
XX	No waiver of certain rights.
XXI	Unavoidable delay.
XXII	Postponement of obligations.
XXIII	Nondiscrimination.
XXIV	Counterparts.
XXV	Subsequent joinder.
XXVI	Covenants run with the land.
XXVII	Notices.
XXVIII	Loss of title.
XXIX	Taxes.
XXX	Relation of parties.
XXXI	Special Federal lease stipulation and/or conditions.

——————————— UNIT AGREEMENT ——————— COUNTY ———————

This Agreement entered into as of the ——— day of ———————, 19—, by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the "parties hereto".

WITNESSETH: Whereas the parties hereto are the owners of working, royalty, or other geothermal resources interests in land subject to this Agreement; and

Whereas the Geothermal Steam Act of 1970 (84 Stat. 1566), hereinafter referred to as the "Act", authorizes Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any geothermal resources pool, field, or like area, or any part thereof, for the purpose of more properly conserving the natural resources thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

Whereas the parties hereto hold sufficient interest in the ——————— Unit Area covering the land herein described to effectively control operations therein; and

Whereas, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operations of the area subject to this Agreement under the terms, conditions, and limitations herein set forth;

Now, therefore, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined Unit Area, and agree severally among themselves as follows:

ARTICLE I—ENABLING ACT AND REGULATIONS

1.1 The Act and all valid pertinent regulations, including operating and unit plan regulations, heretofore or hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands.

1.2 As to non-Federal lands, the geothermal resources operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

ARTICLE II—DEFINITIONS

2.1 The following terms shall have the meanings here indicated:

(a) *Geothermal lease.* A lease issued under the act of December 24, 1970 (84 Stat. 1566) pursuant to the leasing regulations contained in 43 CFR Group 3200 and, unless the context indicates otherwise, "lease" shall mean a geothermal lease.

(b) *Unit area.* The area described in Article III of this Agreement.

(c) *Unit operator.* The person, association, partnership, corporation, or other business entity designated under this Agreement to conduct operations on Unitized Land as specified herein.

(d) *Participating area.* That part of the Unit Area which is deemed to be productive from a horizon or deposit and to which production would be allocated in the manner described in the unit agreement assuming that all lands are committed to the unit agreement.

(e) *Working interest.* The interest held in geothermal resources or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in this

Agreement, the owner of such interest is vested with the right to explore for, develop, produce and utilize such resources. The right delegated to the Unit Operator as such by this Agreement is not to be regarded as a Working Interest.

(f) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise powers vested in that officer.

(g) *Director.* The Director of the Bureau of Land Management.

(h) *Authorized officer.* Any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

ARTICLE III—UNIT AREA AND EXHIBITS

3.1 The area specified on the map attached hereto marked "Exhibit A" is hereby designated and recognized as constituting the Unit Area, containing ———— acres, more or less.

The above-described Unit Area shall when practicable be expanded to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction is deemed to be necessary or advisable to conform with the purposes of this Agreement.

3.2 Exhibit A attached hereto and made a part hereof is a map showing the boundary of the Unit Area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator.

3.3 Exhibit B attached hereto and made a part thereof is a schedule showing to the extent known to the Unit Operator the acreage, percentage, and kind of ownership of geothermal resources interests in all lands in the Unit Area.

3.4 Exhibits A and B shall be revised by the Unit Operator whenever changes in the Unit Area render such revision necessary, or when requested by the authorized officer, and not less than five copies of the revised Exhibits shall be filed with the authorized officer.

ARTICLE IV—CONTRACTION AND EXPANSION OF UNIT AREA

4.1 Unless otherwise specified herein, the expansion and/or contraction of the Unit Area contemplated in Article 3.1 hereof shall be effected in the following manner:

(a) Unit Operator either on demand of the Director or on its own motion and after prior concurrence by the Director, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the Unit Area, the reasons therefor, and the proposed effective date thereof, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the authorized officer, and copies thereof mailed to the last known address of each Working Interest Owner, Lessee, and Lessor whose interests are affected, advising that 30 days will be allowed for submission to the Unit Operator of any objections.

(c) Upon expiration of the 30-day period provided in the preceding item (b) hereof, Unit Operator shall file with the authorized officer evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto which have been filed with the Unit Operator, together with an application in sufficient number, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the authorized officer, become effective as of the date prescribed in the notice thereof.

4.2 Unitized Leases, insofar as they cover any lands which are excluded from the Unit Area under any of the provisions of this Article IV may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions contained in the Act, and the lease or leases and amendments thereto, except that operations and/or production under this Unit Agreement shall not serve to maintain or continue the excluded portion of any lease.

4.3 All legal subdivisions of unitized lands (i.e., 40 acres by Governmental survey or its nearest lot or tract equivalent in instances of irregular surveys), no part of which is entitled to be within a Participating Area on the fifth anniversary of the effective date of the initial Participating Area established under this Agreement, shall be eliminated automatically from this Agreement effective as of said fifth anniversary and such lands shall no longer be a part of the Unit Area and shall no longer be subject to this Agreement unless diligent drilling operations are in progress on an exploratory well on said fifth anniversary, in which event such lands shall not be eliminated from the Unit Area for as long as exploratory drilling operations are continued diligently with not more than four (4) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.4 An exploratory well, for the purposes of this Article IV is defined as any well, regardless of surface location, projected for completion in a zone or deposit below any zone or deposit for which a Participating Area has been established and is in effect, or any well, regardless of surface location, projected for completion at a subsurface location under Unitized Lands not entitled to be within a Participating Area.

4.5 In the event an exploratory well is completed during the four (4) months immediately preceding the fifth anniversary of the initial Participating Area established under this Agreement, lands not entitled to be within a Participating Area shall not be eliminated from this Agreement on said fifth anniversary, provided the drilling of another exploratory well is commenced under an approved Plan of Operation within four (4) months after the completion of said well. In such event, the land not entitled to be in participation shall not be eliminated from the Unit Area so long as exploratory drilling operations are continued diligently with not more than four (4) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.6 With prior approval of the authorized officer, a period of time in excess of four (4) months may be allowed to elapse between the completion of one well and the commencement of the next well without the automatic elimination of nonparticipating acreage.

4.7 Unitized lands proved productive by drilling operations which serve to delay automatic elimination of lands under this Article IV shall be incorporated into a Participating Area (or Areas) in the same manner as such lands would have been incorporated in such areas had such lands been proven productive during the year preceding said fifth anniversary.

4.8 In the event nonparticipating lands are retained under this Agreement after the fifth anniversary of the initial Participating Area as a result of exploratory drilling operations, all legal subdivisions of unitized land (i.e., 40 acres by Government survey or its nearest lot or tract equivalent in instances of irregular Surveys), no part of which is entitled to be within a Participating Area shall be eliminated automatically as of the 121 day, or such later date as may be established by the authorized officer, following the completion of the last well recognized as delaying such automatic elimination beyond the fifth anniversary of the initial Participating Area established under this Agreement.

ARTICLE V—UNITIZED LAND AND UNITIZED SUBSTANCES

5.1 All land committed to this Agreement shall constitute land referred to herein as "Unitized Land". All geothermal resources in and produced from any and all formations of the Unitized Land are unitized under the terms of this agreement and herein are called "Unitized Substances."

ARTICLE VI—UNIT OPERATOR

6.1 ———————— is hereby designated as Unit Operator and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, production, distribution and utilization of Unitized Substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in Unitized Substances, and the term "Working Interest Owner" when used herein shall include or refer to Unit Operator as the owner of a Working Interest when such an interest is owned by it.

ARTICLE VII—RESIGNATION OR REMOVAL OF UNIT OPERATOR

7.1 Prior to the establishment of a Participating Area, hereunder, Unit Operator shall have the right to resign. Such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator or terminate Unit Operators rights, as such, for a period of six (6) months after notice of its intention to resign has been served by Unit Operator on all Working Interest Owners and the authorized officer, nor until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment whichever is required by the authorized officer, unless a new Unit Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

7.2 After the establishment of a Participating Area hereunder Unit Operator shall have the right to resign in the manner and subject to the limitations provided in 7.1 above.

7.3 The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of Working Interests as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the authorized officer.

7.4 The resignation or removal of Unit Operator under this Agreement shall not terminate its right, title, or interest as the owner of a Working Interest or other interest in Unitized Substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, material, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or, if no such new unit operator is elected, to the common agent appointed to represent the Working Interest Owners in any action taken hereunder to be used for the purpose of conducting operations hereunder.

7.5 In all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the Working Interest Owners shall be jointly responsible for performance of the duties and obligations of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

7.6 The resignation of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation.

ARTICLE VIII—SUCCESSOR UNIT OPERATOR

8.1 If, prior to the establishment of a Participating Area hereunder, the Unit Operator shall resign as Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by vote of the owners of a majority of the Working Interests in Unitized Substances, based on their respective shares, on an acreage basis, in the Unitized Land.

8.2 If, after the establishment of a Participating Area hereunder, the Unit Operator shall resign as Unit Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by vote of the owners of a majority of the Working Interests in Unitized Substances, based on their respective shares, on a participating acreage basis. Provided, that, if a majority but less than 60 percent of the Working Interest in the Participating Lands is owned by the party to this agreement, a concurring vote of one or more additional Working Interest Owners owning 10 percent or more of the Working Interest in the participating land shall be required to select a new Unit Operator.

8.3 The selection of a successor Unit Operator shall not become effective until:

(a) The Unit Operator so selected shall accept in writing the duties, obligations and responsibilities of the Unit Operator, and

(b) The selection shall have been approved by the authorized officer.

8.4 If no successor Unit Operator is selected and qualified as herein provided, the Director at his election may declare this Agreement terminated.

ARTICLE IX—ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT

9.1 Costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of Working Interests; all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of Working Interests, whether one or more, separately or collectively.

9.2 Any agreement or agreements entered into between the Working Interest Owners and the Unit Operator as provided in this Article, whether one or more, are herein referred to as the "Unit Operating Agreement".

9.3 The Unit Operating Agreement shall provide the manner in which the Working Interest Owners shall be entitled to receive their respective share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other contracts, and such other rights and obligations, as between Unit Operator and the Working Interest Owners.

9.4 Neither the Unit Operating Agreement nor any amendment thereto shall be deemed either to modify any of the terms and conditions of this Agreement or to relieve the Unit Operator of any right or obligation established under this Agreement.

9.5 In case of any inconsistency or conflict between this Agreement and the Unit Operating Agreement, this Agreement shall govern.

9.6 Three true copies of any Unit Operating Agreement executed pursuant to this Article IX shall be filed with the authorized officer prior to approval of this Agreement.

ARTICLE X—RIGHTS AND OBLIGATIONS OF UNIT OPERATOR

10.1 The right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting, producing, distributing or utilizing Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator as provided in this Agreement in accordance with a Plan of Operations approved by the authorized officer.

10.2 Upon request by Unit Operator, acceptable evidence of title to geothermal resources interests in the Unitized Land shall be deposited with the Unit Operator, and together with this Agreement shall constitute and define the rights, privileges, and obligations of Unit Operator.

10.3 Nothing in this Agreement shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that the Unit Operator, in its capacity as Unit Operator shall exercise the rights of possession and use vested in the parties hereto only for the purposes specified in this Agreement.

10.4 The Unit Operator shall take such measures as the authorized officer deems appropriate and adequate to prevent drainage of Unitized Substances from Unitized Land by wells on land not subject to this Agreement.

10.5 The Director is hereby vested with authority to alter or modify from time to time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this Agreement.

ARTICLE XI—PLAN OF OPERATION

11.1 Concurrently with the submission of this Agreement for approval, Unit Operator shall submit an acceptable initial Plan of Operation. Said plan shall be as complete and adequate as the authorized officer may determine to be necessary for timely exploration and/or development and to insure proper protection of the environment and conservation of the natural resources of the Unit Area.

11.2 Prior to the expiration of the initial Plan of Operation, or any subsequent Plan of Operation, Unit Operator shall submit for approval of the authorized officer an acceptable subsequent Plan of Operation for the Unit Area which, when approved by the authorized officer, shall constitute the exploratory and/or development drilling and operating obligations of Unit Operators under this Agreement for the period specified therein.

11.3 Any plan of Operation submitted hereunder shall:

(a) Specify the number and locations of any wells to be drilled and the proposed order and time for such drilling, and

(b) To the extent practicable, specify the operating practices regarded as necessary and advisable for proper conservation of natural resources and protection of the environment in compliance with section 1.1.

11.4 The Plan of Operation submitted concurrently with this Agreement for approval shall prescribe that within six (6) months after the effective date hereof, the Unit Operator shall begin to drill an adequate test well at a location approved by the authorized officer, unless on such effective date a well is being drilled conformably with the terms, hereof, and thereafter continue such drilling diligently until the ——— formation has been tested or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (i.e., quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the authorized officer that further drilling of said well would be unwarranted or impracticable, *Provided, however,* That Unit Operator shall not in any event be required to drill said well to a depth in excess of ——— feet.

11.5 The initial Plan of Operation and/or subsequent Plans of Operation submitted under this article shall provide that the Unit Operator shall initiate a continuous drilling program providing for drilling of no less than one well at a time, and allowing no more than six (6) months time to elapse between completion of one well and the beginning of the next well, until a well capable of producing Unitized Substances in paying quantities is completed to the satisfaction of the authorized officer or until it is reasonably proved that the Unitized Land is incapable of producing Unitized Substances in paying quantities in the formations drille under this Agreement.

11.6 When warranted by unforeseen ci cumstances, the authorized officer ma grant a single extension of any or all of th critical dates for exploratory drilling oper ations cited in the initial or subsequen Plans of Operation. No such extension shal exceed a period of four (4) months for each well, required by the initial Plan of Oper ation.

11.7 Until there is actual production o Unitized Substances, the failure of Unit Op erator to timely drill any of the wells pro vided for in Plans of Operation require under this Article XI or to timely submit ar acceptable subsequent Plan of Operations shall, after notice of default or notice of prospective default to Unit Operator by the authorized officer and after failure of Unit Operator to remedy any actual default within a reasonable time (as determined by the authorized officer), result in automatic termination of this Agreement effective as of the date of the default, as determined by the authorized officer.

11.8 Separate Plans of Operations may be submitted for separate productive zones, subject to the approval of the authorized officer. Also subject to the approval of the authorized officer, Plans of Operation shall be modified or supplemented when necessary to meet changes in conditions or to protect the interest of all parties to this Agreement.

ARTICLE XII—PARTICIPATING AREAS

12.1 Prior to the commencement of production of Unitized Substances, the Unit Operator shall submit for approval by the authorized officer a schedule (or schedules) of all land then regarded as reasonably proved to be productive from a pool or deposit discovered or developed; all lands in said schedule (or schedules), on approval of the authorized officer, will constitute a Participating Area (or Areas) effective as of the date production commences or the effective date of this Unit Agreement, whichever is later. Said schedule (or schedules) shall also set forth the percentage of Unitized Substances to be allocated, as herein provided, to each tract in the Participating Area (or Areas) so established and shall govern the allocation of production commencing with the effective date of the Participating Area.

12.2 A separate Participating Area shall be established for each separate pool or deposit of Unitized Substances or for any group thereof which is produced as a single pool or deposit and any two or more Participating Areas so established may be combined into one, on approval of the authorized officer. The effective date of any Participating Area established after the commencement of actual production of Unitized Substances shall be the first of the month in which is obtained the knowledge or information on which the establishment of said Participating Area is based, unless a more appropriate effective date is proposed by the Unit Operator and approved by the authorized officer.

12.3 Any Participating Area (or Areas) established under 12.1 or 12.2 above shall, subject to the approval of the authorized officer, be revised from time to time to include additional land then regarded as reasonably proved to be productive from the pool or deposit for which the Participating Area was established or to include lands necessary to unit operations, or to exclude land then regarded as reasonably proved not to be productive from the pool or deposit for which the Participating Area was established or to exclude land not necessary to unit operations and the schedule (or schedules) of allocation percentages shall be revised accordingly.

12.4 Subject to the limitation cited in 12.1 hereof, the effective date of any revision of a Participating Area established under Articles 12.1 or 12.2 shall be the first of the month in which is obtained the knowledge or information on which such revision is predicated, provided, however, that a more appropriate effective date may be used if justified by the Unit Operator and approved by the authorized officer.

12.5 No land shall be excluded from a Participating Area on account of depletion of the Unitized Substances, except that any Participating Area established under the provisions of this Article XII shall terminate automatically whenever all operations are abandoned in the pool or deposit for which the Participating Area was established.

12.6 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of a Participating Area.

ARTICLE XIII—ALLOCATION OF UNITIZED SUBSTANCES

13.1 All Unitized Substances produced from a Participating Area, established under this Agreement, shall be deemed to be produced equally on an acreage basis from the several tracts of Unitized Land within the Participating Area established for such production.

13.2 For the purpose of determining any benefits accruing under this Agreement, each Tract of Unitized Land shall have allocated to it such percentage of said production as the number of acres in the Tract included in the Participating Area bears to the total number of acres of Unitized Land in said Participating Area.

13.3 Allocation of production hereunder for purposes other than for settlement of the royalty obligations of the respective Working Interest Owners, shall be on the basis prescribed in the Unit Operating Agreement whether in conformity with the basis of allocation set forth above or otherwise.

13.4 The Unitized Substances produced from a Participating Area shall be allocated as provided herein regardless of whether any wells are drilled on any particular part or tract of said Participating Area.

ARTICLE XIV—RELINQUISHMENT OF LEASES

14.1 Pursuant to the provisions of the Federal leases and 43 CFR 3244.1, a lessee of record shall, subject to the provisions of the Unit Operating Agreement, have the right to relinquish any of its interests in leases committed hereto, in whole or in part; provided, that no relinquishment shall be made of interests in land within a Participating Area without the prior approval of the Director.

14.2 A Working Interest Owner may exercise the right to surrender, when such right is vested in it by any non-Federal lease, sublease, or operating agreement, provided that each party who will or might acquire the Working Interest in such lease by such surrender or by forfeiture is bound by the terms of this Agreement, and further provided that no relinquishment shall be made of such land within a Participating Area without the prior written consent of the non-Federal Lessor.

14.3 If, as the result of relinquishment, surrender, or forfeiture the Working Interests become vested in the fee owner or lessor of the Unitized Substances, such owner may:

(1) Accept those Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement; or

(2) Lease the portion of such land as is included in a Participating Area established hereunder, subject to this Agreement and the Unit Operating Agreement; and provide for the independent operation of any part of such land that is not then included within a Participating Area established hereunder.

14.4 If the fee owner or lessor of the Unitized Substances does not, (1) accept the Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement, or (2) lease such lands as provided in 14.3 above within six (6) months after the relinquished, surrendered, or forfeited Working Interest becomes vested in said fee owner or lessor, the Working Interest benefits and obligations accruing to such land under this Agreement and the Unit Operating Agreement shall be shared by the owners of the remaining unitized Working Interests in accordance with their respective Working Interest ownerships, and such owners of Working Interests shall compensate the fee owner or lessor of Unitized Substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease or leases in effect when the Working Interests were relinquished, surrendered, or forfeited.

14.5 Subject to the provisions of 14.4 above, an appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of any surrendered or forfeited Working Interest subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within thirty (30) days.

14.6 In the event no Unit Operating Agreement is in existence and a mutually acceptable agreement cannot be consummated between the proper parties, the authorized officer may prescribe such reasonable and equitable conditions of agreement as he deems warranted under the circumstances.

14.7 The exercise of any right vested in a Working Interest Owner to reassign such Working Interest to the party from whom obtained shall be subject to the same conditions as set forth in this Article XIV in regard to the exercise of a right to surrender.

ARTICLE XV—RENTALS AND MINIMUM ROYALTIES

15.1 Any unitized lease on non-Federal land containing provisions which would terminate such lease unless drilling operations are commenced upon the land covered thereby within the time therein specified or rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provisions of this Agreement, be deemed to accrue as to the portion of the lease not included within a Participating Area and become payable during the term thereof as extended by this Agreement, and until the required drillings are commenced upon the land covered thereby.

15.2 Rentals are payable on Federal leases on or before the anniversary date of each lease year; minimum royalties accrue from the anniversary date of each lease year and are payable at the end of the lease year.

15.3 Beginning with the lease year commencing on or after ———— and for each lease year thereafter, rental or minimum royalty for lands of the United States subject to this Agreement shall be made on the following basis:

(a) An advance annual rental in the amount prescribed in unitized Federal leases, in no event creditable against production royalties, shall be paid for each acre or fraction thereof which is not within a Participating Area.

(b) A minimum royalty shall be charged at the beginning of each lease year (such minimum royalty to be due as of the last day of the lease year and payable within thirty (30) days thereafter) of $2 an acre or fraction thereof, for all Unitized Acreage within a Participating Area as of the beginning of the lease year. If there is production during the lease year the deficit, if any, between the actual royalty paid and the minimum royalty prescribed herein shall be paid.

15.4 Rental or minimum royalties due on leases committed hereto shall be paid by Working Interest Owners responsible therefor under existing contracts, laws, and regulations, or by the Unit Operator.

15.5 Settlement for royalty interest shall be made by Working Interest Owners responsible therefor under existing contracts, laws, and regulations, or by the Unit Operator, on or before the last day of each month for Unitized Substances produced during the preceding calendar month.

15.6 Royalty due the United States shall be computed as provided in the operating regulations and paid in value as to all Unitized Substances on the basis of the amounts thereof allocated to unitized Federal land as provided herein at the royalty rate or rates specified in the respective Federal leases.

15.7 Nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations for the payment of any rental, minimum royalty, or royalty due under their leases.

ARTICLE XVI—OPERATIONS ON NONPARTICIPATING LAND

16.1 Any party hereto owning or controlling the Working Interest in any Unitized Land having thereon a regular well location may, with the approval of the authorized officer and at such party's sole risk, costs, and expense, drill a well to test any formation of deposit for which a Participating Area has not been established or to test any formation or deposit for which a Participating Area has been established if such location is not within said Participating Area, unless within 30 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill such a well in like manner as other wells are drilled by the Unit Operator under this Agreement.

16.2 If any well drilled by a Working Interest Owner other than the Unit Operator proves that the land upon which said well is situated may properly be included in a Participating Area, such Participating Area shall be established or enlarged as provided in this Agreement and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this Agreement and the Unit Operating Agreement.

ARTICLE XVII—LEASES AND CONTRACTS CONFORMED AND EXTENDED

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or utilization of geothermal resources on lands committed to this Agreement, are hereby expressly modified and amended only to the extent necessary to make the same conform to the provisions hereof, otherwise said leases, subleases, and contracts shall remain in full force and effect.

17.2 The parties hereto consent that the Secretary shall, by his approval hereof, modify and amend the Federal leases committed hereto and the regulations in respect thereto to the extent necessary to conform said leases and regulations to the provisions of this Agreement.

17.3 The development and/or operation of lands subject to this Agreement under the terms hereof shall be deemed full performance of any obligations for development and operation with respect to each and every separately owned tract subject to this Agreement, regardless of whether there is any development of any particular tract of the Unit Area.

17.4 Drilling and/or producing operations performed hereunder upon any tract of Unitized Lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of Unitized Land.

17.5 Suspension of operations and/or production on all Unitized Lands pursuant to direction or consent of the Secretary or his duly authorized representative shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of Unitized Land. A suspension of operations and/or production limited to specified lands shall be applicable only to such lands.

17.6 Subject to the provisions of Article XV hereof and 17.10 of this Article, each lease, sublease, or contract relating to the exploration, drilling, development, or utilization of geothermal resources of lands other than those of the United States committed to this Agreement, is hereby extended beyond any such term so provided therein so that it shall be continued for and during the term of this Agreement.

17.7 Subject to the lease renewal and the readjustment provision of the Act, any Federal lease committed hereto may, as to the Unitized Lands, be continued for the term so provided therein, or as extended by law. This subsection shall not operate to extend any lease or portion thereof as to lands excluded from the Unit Area by the contraction thereof.

17.8 Each sublease or contract relating to the operations and development of Unitized Substances from lands of the United States committed to this Agreement shall be continued in force and effect for and during the term of the underlying lease.

17.9 Any Federal lease heretofore or hereafter committed to any such unit plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization.

17.10 In the absence of any specific lease provision to the contrary, any lease, other than a Federal lease, having only a portion of its land committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

17.11 Upon termination of this Agreement, the leases covered hereby may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions of the Act, the lease or leases, and amendments thereto.

ARTICLE XVIII—EFFECTIVE DATE AND TERM

18.1 This Agreement shall become effective upon approval by the Secretary or his duly authorized representative and shall terminate five (5) years from said effective date unless,

(a) Such date of expiration is extended by the Director, or

(b) Unitized Substances are produced or utilized in commercial quantities in which event this Agreement shall continue for so long as Unitized Substances are produced or utilized in commercial quantities, or

(c) This Agreement is terminated prior to the end of said five (5) year period as heretofore provided.

18.2 This Agreement may be terminated at any time by the owners of a majority of the Working Interests, on an acreage basis, with the approval of the authorized officer. Notice of any such approval shall be given by the Unit Operator to all parties hereto.

ARTICLE XIX—APPEARANCES

19.1 Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior, and to appeal from decisions, orders or rulings issued under the regulations of said Department, or to apply for relief from any of said regulations or in any proceedings relative to operations before the Department of the Interior or any other legally constituted authority: *Provided, however*, That any interested parties shall also have the right, at its own expenses, to be heard in any such proceeding.

ARTICLE XX—NO WAIVER OF CERTAIN RIGHTS

20.1 Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the State wherein lands subject to this Agreement are located, or of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond his or its authority to waive.

ARTICLE XXI—UNAVOIDABLE DELAY

21.1 The obligations imposed by this Agreement requiring Unit Operator to commence or continue drilling or to produce or utilize Unitized Substances from any of the land covered by this Agreement, shall be suspended while, but only so long as, Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, Acts of God, Federal or other applicable law, Federal or other authorized governmental agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials in open market, or other matters beyond the reasonable control of Unit Operator, whether similar to matters herein enumerated or not.

21.2 No unit obligation which is suspended under this section shall become due less than thirty (30) days after it has been determined that the suspension is no longer applicable.

21.3 Determination of creditable "Unavoidable Delay" time shall be made by the Unit Operator subject to approval of the authorized officer.

ARTICLE XXII—POSTPONEMENT OF OBLIGATIONS

22.1 Notwithstanding any other provisions of this Agreement, the Director, on his own initiative or upon appropriate justification by Unit Operator, may postpone any obligation established by and under this Agreement to commence or continue drilling or to operate on or produce Unitized Substances from lands covered by this Agreement when in his judgement, circumstances warrant such action.

ARTICLE XXIII—NONDISCRIMINATION

23.1 In connection with the performance of work under this Agreement, the Operator agrees to comply with all of the provisions of section 202 (1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amende by Executive Order 11375 (32 FR 14303 which are hereby incorporated by referenc in this Agreement.

ARTICLE XXIV—COUNTERPARTS

24.1 This Agreement may be executed in any number of counterparts no one of which needs to be executed by all parties, or may be ratified or consented to by separate instruments in writing specifically referring hereto, and shall be binding upon all parties who have executed such a counterpart, ratification or consent hereto, with the same force and effect as if all such parties had signed the same document.

ARTICLE XXV—SUBSEQUENT JOINDER

25.1 If the owner of any substantial interest in geothermal resources under a tract within the Unit Area fails or refuses to subscribe or consent to this Agreement, the owner of the Working Interest in that tract may withdraw said tract from this Agreement by written notice delivered to the authorized officer and the Unit Operator prior to the approval of this Agreement by the authorized officer.

25.2 Any geothermal resources interests in lands within the Unit Area not committed hereto prior to approval of this Agreement may thereafter be committed by the owner or owners thereof subscribing or consenting to this Agreement, and, if the interest is a Working Interest, by the owner of such interest also subscribing to the Unit Operating Agreement.

25.3 After operations are commenced hereunder, the right of subsequent joinder, as provided in this Article XXV, by a working Interest Owner is subject to such requirements or approvals, if any, pertaining to such joinder, as may be provided for in the Unit Operating Agreement. Joinder to the Unit Agreement by a Working Interest Owner, at any time, must be accompanied by appropriate joinder to the Unit Operating Agreement, if more than one committed Working Interest Owner is involved, in order for the interest to be regarded as committed to this Unit Agreement.

25.4 After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by the Working Interest Owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this Agreement unless the corresponding Working Interest is committed hereto.

25.5 Except as may otherwise herein be provided, subsequent joinders to this Agreement shall be effective as of the first day of the month following the filing with the authorized officer of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this Agreement unless objection to such joinder is duly made within sixty (60) days by the authorized officer.

ARTICLE XXVI—COVENANTS RUN WITH THE LAND

26.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance, of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

26.2 No assignment or transfer of any Working Interest or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

ARTICLE XXVII—NOTICES

27.1 All notices, demands or statements required hereunder to be given or rendered to the parties hereto shall be deemed fully given if given in writing and personally delivered to the party or sent by postpaid registered or certified mail, addressed to such party or parties at their respective addresses set forth in connection with the signatures hereto or to the ratification or consent hereof or to such other address as any such party may have furnished in writing to party sending the notice, demand or statement.

ARTICLE XXVIII—LOSS OF TITLE

28.1 In the event title to any tract of Unitized Land shall fail and the true owner cannot be induced to join in this Agreement, such tract shall be automatically regarded as not committed hereto and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title.

28.2 In the event of a dispute as to title as to any royalty, Working Interest, or other interests subject hereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled: *Provided*, That, as to Federal land or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the authorized officer to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

ARTICLE XXIX—TAXES

29.1 The Working Interest Owners shall render and pay for their accounts and the accounts of the owners of nonworking interests all valid taxes on or measured by the Unitized Substances in and under or that may be produced, gathered, and sold or utilized from the land subject to this Agreement after the effective date hereof.

29.2 The Working Interest Owners on each tract may charge a proper proportion of the taxes paid under 29.1 hereof to the owners of nonworking interests in said tract, and may reduce the allocated share of each royalty owner for taxes so paid. No taxes shall be charged to the United States or the State of ——— or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

ARTICLE XXX—RELATION OF PARTIES

30.1 It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing in this Agreement contained, expressed, or implied, nor any operations conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

ARTICLE XXXI—SPECIAL FEDERAL LEASE STIPULATIONS AND/OR CONDITIONS

31.1 Nothing in this Agreement shall modify special lease stipulations and/or conditions applicable to lands of the United States. No modification of the conditions necessary to protect the lands or functions of lands under the jurisdiction of any Federal agency is authorized except with prior consent in writing whereby the authorizing official specifies the modification permitted.

In witness whereof, the parties hereto have caused this Agreement to be executed and have set opposite their respective names the date of execution.

Unit operator (as unit operator and as working interest owner) ————————

——— ————————————

Witnesses:

————————————————

Witnesses:

By ————————————

Working Interest Owners:

————————————————

Witnesses:

By ————————————

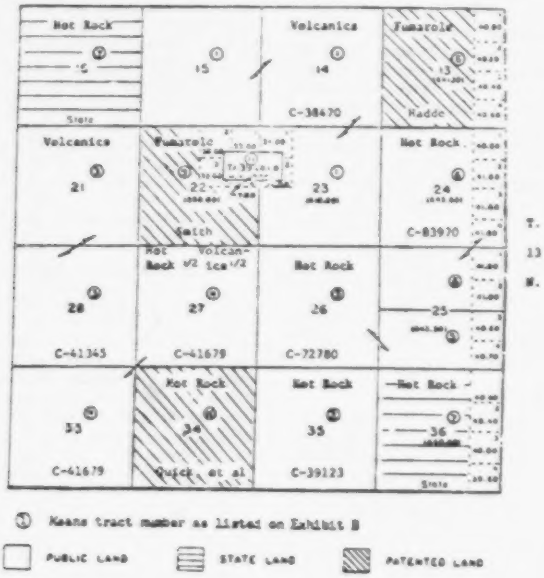
Other Interest Owners:

By ————————————

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44793, Sept. 30, 1983]

§ 3286.1-1 Model Exhibit "A".

EXHIBIT A—BIG VAPOR UNIT AREA T. 13 N., R. 10 W., M.D.M., California


R 1 W
Hot Rock
②
16
State
①
15
Volcanics
①
14
C-38470
Fumarole
⑤
13
Radde
Volcanics
③
21
Fumarole
⑤
22
Smith
①
23
Hot Rock
④
24
C-83970
T.
13
N.
③
28
C-41345
Hot Volcan-
Rock 1/2 ics 1/2
④
27
C-41679
Hot Rock
③
26
C-72780
④
25
⑤
⑥
33
C-41679
Hot Rock
⑥
34
Quick, et al
Hot Rock
②
35
C-39123
Hot Rock
②
36
State
① Means tract number as listed on Exhibit B
PUBLIC LAND
STATE LAND
PATENTED LAND

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

§ 3286.1-2 Model Exhibit "B".

EXHIBIT B—BIG VAPOR UNIT AREA, NAPA COUNTY, CALIF., T. 13 N., R. 10 W.

Tract No.	Description of land	Number of acres	Serial number and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Working interest and percentage
	Federal land	*serials*	*California*			
1	Sec. 14: All Sec. 15: All Sec. 23: Lots 1, 2, S½, NE¼, E½NW¼	1,890.00	38470 7-31-82	United States: All	Volcanics, Inc	Volcanics, Inc: All
2	Sec. 35: All	640.00	39123 7-31-82	do	D. H. Boiler	Hot Rock Co: All
3	Sec. 21: All Sec. 28: All	1,280.00	41345 7-31-81	do	C. S. Waters—50% D. F. Mann—50%	Volcanics, Co: 50% Hot Rock Co: 50%
4	Sec. 27: All	1,280.00	41679	do	H. C. Pipes	Fumarole, Ltd: All

EXHIBIT B—BIG VAPOR UNIT AREA, NAPA COUNTY, CALIF., T. 13 N., R. 10 W.—Continued

Tract No.	Description of land	Number of acres	Serial number and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Working interest and percentage
5	Sec. 33: All Sec. 26: All Sec. 25: S½	961.50	71278	......do	Hot Rock Co	Hot Rock Co.: All.
6	Sec. 24: All Sec. 25: N½	965.80	9-31-82 83970 Appl	......do	H. C. Pipes	Do.
6 Federal tracts 7,017.30 acres or 68.47% of unit area						
	California State land					
7	Sec. 16: All Sec. 36: All	1,280.60	65-67430	State of California: All	Hot Rock Co	Hot Rock Co.: All.
1 State tract 1,280.60 acres or 12.49% of unit area						
	Patented land					
8	Sec. 13: All	641.20	6-30-79	I. B. Hadde: All	Fumarole, Ltd	Fumarole, Ltd.: All.
9	Sec. 22: Lots 1, 2, 3, 4, S½, NW¼	590.00	2-28-81	J. P. Smith: All	do	Do.
10	Sec. 34: All	640.00	3-31-81	A. G. Quick: 75% P. T. Land: 25%	Hot Rock Co	Hot Rock Co.: All.
11	Tract 39	80.00	4-30-81	M. V. Jones: All	Unleased	M. V. Jones: All.
4 Patented tracts 1,951.20 acres or 19.04% of unit area						
Total—11 tracts 10,249.10 acres in entire unit area						

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

§ 3286.2 Model unit bond.

COLLECTIVE CORPORATE SURETY

Know all men by these presents, That we, ———— (Name of Unit Operator) signing as Principal, for and on behalf of the record owners of unitized substances now or hereafter covered by the unit agreement for this ———— (Name of Unit) approved ———, (Date) ————, (Name and address of Surety) as Surety are jointly and severally held and firmly bound unto the United States of America in the sum of ———— (Amount of bond) Dollars, lawful money of the United States, for the use and benefit of and to be paid to the United States and any entryman or patentee of any portion of the unitized land, heretofore entered or patented with the reservation of the geothermal resources deposits to the United States, for which payment well and truly to be made, we bind ourselves, and each of us, and each of our heirs, executors, administrators, successors, and assigns by these presents.

The condition of the foregoing obligation is such that, whereas the Secretary on ——— (Date) approved under the provisions of the Geothermal Steam Act of 1970, a unit agreement for the development and operation of the ———— (Name of Unit and State); and

Whereas said Principal and record owners of unitized substances, pursuant to said unit agreement, have entered into certain covenants and agreements as set forth therein, under which operations are to be conducted; and

Whereas said Principal as Unit Operator has assumed the duties and obligations of the respective owners of unitized substances as defined in said unit agreement; and

Whereas said Principal and surety agree to remain bound in the full amount of the bond for failure to comply with the terms of the unit agreement, and the payment of rentals, minimum royalties, and royalties due under the Federal leases committed to said unit agreement; and

Whereas the Surety hereby waives any right of notice of and agrees that this bond may remain in force and effect notwithstanding:

(a) Any additions to or change in the ownership of the unitized substances herein described.

(b) Any suspension of the drilling or producing requirements or waiver, suspension or reduction of rental or minimum royalty payments or reduction of royalties pursuant to applicable laws or regulations thereunder; and

Whereas said Principal and Surety agree to the payment of compensatory royalty under the regulations of the Interior Department in lieu of drilling necessary offset wells in the event of drainage; and

Whereas nothing herein contained shall preclude the United States from requiring an additional bond at any time when deemed necessary:

Now, therefore, if the said Principal shall faithfully comply with all of the provisions of the above-identified unit agreement and with the terms of the leases committed thereto, then the above obligation is to be of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered this ———day of ————, 19——, in the presence of:
Witnesses:

____

(Principal)

____

(Surety)

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

§ 3286.3 Model designation of successor operator.

Designation of successor Unit Operator ————, Unit Area, County of ———, State of ————, No. ——.

This indenture, dated as of the —— day of ————, 19——, by and between ——————, hereinafter designated as "First Party," and the owners of unitized working interest, hereinafter designated as "Second Parties."

Witnesseth: Whereas under the provisions of the Geothermal Steam Act of December 24, 1970, 84 Stat. 1566, the Secretary on the —— day of ————, 19——, approved a unit agreement for the ———— Unit Area, wherein ———— is designated as Unit Operator; and

Whereas said —————— has resigned as such Operator,[1] and the designation of a successor Unit Operator is now required pursuant to the terms thereof; and

Whereas First Party has been and hereby is designated by Second Parties as a Unit Operator, and said First Party desires to assume all the rights, duties, and obligations of Unit Operator under the said unit agreement.

Now, therefore, in consideration of the premises hereinbefore set forth and the promises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of the ———— unit agreement, and the Second Parties covenant and agree that, effective upon approval of this indenture by the authorized officer, of the Minerals Management Service, First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges and Unit Operator, pursuant to the terms and conditions of said unit agreement; said unit agreement being hereby incorporated herein by references and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

____

(First Party)

____

(Witnesses)

____

(Second Party)

____

(Witnesses)

I hereby approve the foregoing indenture designating ———— as Unit Operator under the unit agreement for the ——— Unit Area, this —— day of ————, 19——.

____

Authorized Officer,
Bureau of Land Management.

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

§ 3286.4 Model change of operator by assignment.

Change in Unit Operator ———— unit Area, County of ————, State of ————, No. ——.

This indenture, dated as of the —— day of ——————, 19——, by and between ——————— hereinafter designated as

---

[1] Where the designation of a successor Unit Operator is required for any reason other than resignation, such reason shall be substituted for the one stated.

"First Party," and ————————, hereinafter designated as "Second Party."

Witnesseth: Whereas under the provisions of the Geothermal Steam Act of December 24, 1970, 84 Stat. 1566, the Secretary on the —— day of ————, 19——, approved a unit agreement for the ———— Unit Area, wherein the First Party is designated as Unit Operator; and

Whereas the First Party desires to transfer, assign, release, and quitclaim, and the Second Party desires to assume all the rights, duties, and obligations of Unit Operator under the unit agreement; and

Whereas for sufficient and valuable consideration, the receipt whereof is hereby acknowledged, the First Party has transferred, conveyed and assigned all his/its rights under certain operating agreements involving lands within the area set forth in said unit agreement unto the Second Party:

Now, therefore, in consideration of the premises hereinbefore set forth, the First Party does hereby transfer, assign, release, and quitclaim unto Second Party all of First Party's rights, duties and obligations as Unit Operator under said unit agreement; and

Second Party hereby accept this assignment and hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of said unit agreement to the full extent set forth in this assignment, effective upon approval of this indenture by the authorized officer of the Minerals Management Service; said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

————————————————————

(First Party)

————————————————————

(Witnesses)

————————————————————

(Second Party)

————————————————————

(Witnesses)

I hereby approve the foregoing indenture designated ———————— as Unit Operator under the unit agreement for the ———— Unit Area, this —— day of ————, 19——.

————————————

Authorized Officer,
Bureau of Land Management.

[38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983]

Group 3400—Coal Management

NOTE: The information collection requirements contained in parts 3400, 3410, 3420, 3430, 3450, 3460 and 3470 of Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0073. The information is being collected to allow the authorized officer to determine if the applicant to lease, for or develop Federal coal is qualified to hold such lease. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

(See 47 FR 33133, July 30, 1982)

PART 3400—COAL MANAGEMENT: GENERAL

Subpart 3400—Introduction: General

Sec.
3400.0-3 Authority.
3400.0-5 Definitions.
3400.1 Multiple development.
3400.2 Lands subject to leasing.
3400.3 Limitations on authority to lease.
3400.3-1 Consent or conditions of surface management agency.
3400.3-2 Department of Defense lands.
3400.3-3 Department of Agriculture lands.
3400.3-4 Trust protection lands.
3400.4 Federal/state government cooperation.
3400.5 Coal production regions.
3400.6 Minimum comment period.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-531 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 44 FR 42609, July 19, 1979, unless otherwise noted.

Subpart 3400—Introduction: General

§ 3400.0-3 Authority.

(a) These regulations are issued under the authority of and to implement provisions of:

(1) The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*).

(2) The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359 *et seq.*).

(3) The Federal Land Policy and Management Act of 1976, October 21, 1976 (43 U.S.C. 1701 *et seq.*).

(4) The Surface Mining Control and Reclamation Act of 1977, August 3, 1977 (30 U.S.C. 1201 *et seq.*).

(5) The Multiple Mineral Development Act of August 13, 1954 (30 U.S.C. 521-531 *et seq.*).

(6) The Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 *et seq.*).

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(8) The Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092).

(9) The Act of October 30, 1978 (92 Stat. 2073-2075).

(b) Specific citations of authority in subsequent subparts of this Group 3400 are to authorities from which the subpart is chiefly derived or which the subpart chiefly implements.

§ 3400.0-5 Definitions.

As used in this part:

(a) *Alluvial valley floor* has the meaning set forth in 30 CFR Chapter VII.

(b) *Authorized officer* means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(c) *Bonus* means that value in excess of the rentals and royalties that accrues to the United States because of coal resource ownership that is paid as part of the consideration for receiving a lease.

(d) *Bypass coal* means an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any mining operation other than that of the applicant for either an emergency lease under the provisions of § 3425.1-4 of this title or a lease modification.

(e) *Casual use* means activities which do not ordinarily lead to any appreciable disturbance or damage to lands, resources or improvements, for example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over already established roads and trails.

(f) *Certificate of bidding rights* means a right granted by the Secretary to apply the fair market value of a relinquished coal or other mineral lease or right to a preference right coal or other mineral lease as a credit against the bonus bid or bids on a competitive lease or leases acquired at a lease sale or sales, or as a credit against the payment required for a coal lease modification.

(g) *Coal deposits* mean all Federally owned coal deposits, except those held in trust for Indians.

(h) *Department* means the United States Department of the Interior.

(i) *Director* means the Director of the Bureau of Land Management unless otherwise indicated.

(j) *Environmental assessment* means a document prepared by the responsible Federal agency consistent with 40 CFR 1508.9.

(k) *Exploration* has the meaning set forth in § 3480.0-5(a)(17) of this title.

(l) *Exploration license* means a license issued by the authorized officer to permit the licensee to explore for coal on unleased Federal lands.

(m) *Exploration plan* has the meaning set forth in § 3480.0-5(a)(18) of this title.

(n) *Fair market value* means that amount in cash, or on terms reasonably equivalent to cash, for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing but not obligated to sell or lease to a knowledgeable purchaser who desires but is not obligated to buy or lease.

(o) *Federal lands* mean lands owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands, including surface estate, mineral estate and coal estate, but excluding lands held by the United States in trust for Indians, Aleuts or Eskimos.

(p) *Governmental entity* means a Federal or state agency or a political subdivision of a state, including a county or a municipality, or any corporation acting primarily as an agency or instrumentality of a state, which produces electrical energy for sale to the public.

(q) *Interest* in a lease, application or bid means: any record title interest, overriding royalty interest, working interest, operating rights or option, or any agreement covering such an interest; any claim or any prospective or future claim to an advantage or benefit from a lease; and any participation or any defined or undefined share in any increments, issues, or profits that
nay be derived from or that may
ccrue in any manner from the lease
ased on or pursuant to any agree-
nent or understanding existing when
he application was filed or entered
nto while the lease application or bid
s pending. Stock ownership or stock
ontrol does not constitute an interest
n a lease within the meaning of this
efinition. Attribution of acreage to
tock ownership interests in leases is
overed by § 3472.1-3(b) of this title.

(r) *Lease* means a Federal lease,
sued under the coal leasing provi-
ons of the mineral leasing laws,
hich grants the exclusive right to ex-
ore for and extract coal. In provi-
ons of this group that also refer to
ederal leases for minerals other than
al, the term *Federal coal lease* may
pply.

s) *Lease bond* means the bond or
uivalent security given the Depart-
ent to assure payment of all obliga-
ns under a lease, exploration li-
nse, or license to mine, and to assure
at all aspects of the mining oper-
on other than reclamation oper-
ons under a permit on a lease are
nducted in conformity with the ap-
oved mining or exploration plan.
is is the same as the *Federal lease*
d referred to in 30 CFR 742.11(a).

t) *Licensee* means the holder of an
loration license.

u) *License to mine* means a license
ed under the provisions of part
0 to mine coal for domestic use.

) *Logical Mining Unit* has the
aning set forth in § 3480.0-5(a)(22)
his title.

(w) *Logical Mining Unit reserves* has the meaning set forth in the term *logical mining unit recoverable coal reserves* in § 3480.0-5(a)(23) of this title.

(x) *Maximum economic recovery* has the meaning set forth in § 3480.0-5(a)(24) of this title.

(y) *Mineral leasing laws* mean the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359).

(z) *Mining plan* means a resource recovery and protection plan as described in § 3480.0-5(a)(39) of this title.

(aa) *Mining Supervisor* means the authorized officer.

(bb) *Mining unit* means an area containing technically recoverable coal that will feasibly support a commercial mining operation. The coal may either be Federal coal or be both Federal and non-Federal coal.

(cc) *Operator* means a lessee, exploration licensee or one conducting operations on a lease or exploration license under the authority of the lessee or exploration licensee.

(dd) *Permit* has the meaning set forth in 30 CFR Chapter VII.

(ee) *Permit area* has the meaning set forth in 30 CFR Chapter VII.

(ff) *Public bodies* means Federal and state agencies; political subdivisions of a state, including counties and municipalities; rural electric cooperatives and similar organizations; and nonprofit corporations controlled by any such entities.

(gg) *Qualified surface owner* means the natural person or persons (or corporation, the majority stock of which is held by a person or persons otherwise meeting the requirements of this section) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of paragraphs (gg) (1) and (2) of this section

for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (gg) (1) and (2) of this section. In computing the three year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this section.

(hh) *Reserves* has the meaning set forth in the term *recoverable coal reserves* in § 3480.0-5(a)(37) of this title.

(ii) *Secretary* means the Secretary of the Interior.

(jj) *Sole party in interest* means a party who is and will be vested with all legal and equitable rights under a lease, bid, or an application for a lease. No one is a sole party in interest with respect to a lease or bid in which any other party has any interest.

(kk) *Split estate* means land in which the ownership of the surface is held by persons, including governmental bodies, other than the Federal government and the ownership of underlying coal is, in whole or in part, reserved to the Federal government.

(ll) *Substantial legal and financial commitments* means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal handling and preparation, extraction or storage facilities and other capital intensive activities. Costs of acquiring the coal in place or of the right to mine it without an existing mine are not sufficient to constitute *substantial legal and financial commitments.*

(mm) *Surface coal mining operations* means activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291(28).

(nn) *Surface management agency* means the Federal agency with jurisdiction over the surface of federally owned lands containing coal deposits, and, in the case of private surface over Federal coal, the Bureau of Land Management, except in areas designated as National Grasslands, where it means the Forest Service.

(oo) *Surface Mining Officer* means the regulatory authority as defined in 30 CFR Chapter VII.

(pp) *Valid existing rights* as used in § 3461.1 of this title is defined in 30 CFR 761.5.

(qq) *Written consent* means the document or documents that a qualified surface owner has signed that:

(1) Permit a coal operator to enter and commence surface mining of coal;

(2) Describe any financial or other consideration given or promised in return for the permission, including in-kind considerations;

(3) Describe any consideration given in terms of type or method of operation or reclamation for the area;

(4) Contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and

(5) Contain a full and accurate description of the area covered by the permission.

(rr) For the purposes of section 2(a)(2)(A) of the Act:

(1) *Arm's length transaction* means the transfer of an interest in a lease to an entity that is not controlled by or under common control with the transferor.

(2) *Bracket* means a 10-year period that begins on the date that coal is first produced on or after August 4 1976, from a lease that has not been made subject to the diligence provisions of part 3480 of this title on the date of first production.

(3) *Controlled by or under common control with,* based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

(4) *Entity* means any person, association, or corporation, or any subsidiary affiliate, or persons controlled by or under common control with such person, association, or corporation.

(5) *Holds and has held* means the cumulative amount of time that an entity holds any working interest in a lease on or after August 4, 1976. The *holds and has held* requirement of section 2(a)(2)(A) of the Act is working interest holder-specific for each lease. *Working interest* includes both record title interests and arrangements whereby an entity has the ability to determine when, and under what circumstances, the rights granted by the lease to develop coal will be exercised.

(6) *Producing* means actually severing coal, or operating an ongoing mining operation in accordance with standard industry operation practices. A lease is deemed to be producing, even though:

(i) Severance is temporarily suspended for reasons beyond the reasonable control of the operator/lessee, as that term is defined at § 3480.0-5(a) of this title, including but not limited to factors such as: Dragline or other equipment moving, breakdown, or repair; overburden removal; sale of coal from stockpiles; vacations and holidays; orders of governmental authorities; coal buyer's operations of its power plants that require the coal buyer to stop taking coal shipments for a limited duration of time; or

(ii) Severed coal is being processed, loaded, or transported from the point of severance to the point of sale.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33133, 33134, July 30, 1982; 47 FR 38131, Aug. 30, 1982; 50 FR 8626, Mar. 4, 1985; 51 FR 43921, Dec. 5, 1986; 52 FR 416, Jan. 6, 1987]

§ 3400.1 Multiple development.

(a) The granting of an exploration license, a license to mine or a lease for the exploration, development, or production of coal deposits shall preclude neither the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

(b) The presence of deposits of other minerals or the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals shall not preclude the granting of an exploration license, a license to mine or a lease for the exploration, development or production of coal deposits on the same lands with suitable stipulations for simultaneous operations.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

(a) Lands in:

(1) The National Park System;

(2) The National Wildlife Refuge System;

(3) The National Wilderness Preservation System;

(4) The National System of Trails;

(5) The National Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns, and villages;

(7) The Naval Petroleum Reserves, the National Petroleum Reserve in Alaska, and oil shale reserves; and

(8) National Recreation Areas designated by law;

(b) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States; and

(c) Land acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

§ 3400.3 Limitations on authority to lease.

§ 3400.3-1 Consent or conditions of surface management agency.

Leases for land, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, may be issued only with the consent of the head or other appropriate official of the other agency having jurisdiction over the lands containing the coal deposits, and subject to such conditions as that officer may prescribe to insure the use and protection of the lands for the primary purpose for which they were acquired or are being administered.

§ 3400.3-2 Department of Defense lands.

The Secretary may issue leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity which:

(a) Produces electrical energy for sale to the public;

(b) Is located in the state in which the leased lands are located; and

(c) Has production facilities in that state, and will use the coal produced from the lease within that state.

§ 3400.3-3 Department of Agriculture lands.

Subject to the provisions of § 3400.3-1, the Secretary may issue leases that authorize surface coal mining operations on Federal lands within the National Forest System, provided that such leases may not be issued on lands within a national forest unless the tract is assessed to be acceptable for all or certain stipulated methods of surface coal mining operations under the provisions of Criterion No. 1 in § 3461.1 of this title.

§ 3400.3-4 Trust protection lands.

The regulations in this group do not apply to the leasing and development of coal deposits held in trust by the United States for Indians. See 43 CFR 3400.0-5(o). Regulations governing those deposits are found in 25 CFR Chapter I.

[44 FR 42609, July 19, 1979, as amended at 47 FR 33134, July 30, 1982]

§ 3400.4 Federal/state government cooperation.

(a) In order to implement the requirements of law for Federal-state cooperation in the management of Federal lands, a Department-state regional coal team shall be established for each coal production region defined pursuant to § 3400.5. The team shall consist of a Bureau of Land Management field representative for each state in the region, who will be the Bureau of Land Management State Director, or, in his absence, his designated representative; the Governor of each state included in the region or, in his absence, his designated representative; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative shall be chairperson of the team. If the region is a multi-state region under the jurisdiction of only one Bureau of Land Management State Office, each State Director shall designate a Bureau of Land Management representative for each state.

(b) Each regional coal team shall guide all phases of the coal activity planning process described in §§ 3420.3 through 3420.3-4 of this title which relate to competitive leasing in the region.

(c) The regional coal team shall also serve as the forum for Department/state consultation and cooperation in all other major Department coal management program decisions in the region, including preference right lease applications, public body and small business setaside leasing, emergency leasing and exchanges.

(d) The regional coal team recommendations on leasing levels under § 3420.2(a)(4) of this title and on regional lease sales under § 3420.3-4(g) shall be accepted except:

(1) In the case of an overriding national interest; or

(2) In the case the advice of the Governor(s) which is contrary to the recommendations of the regional coal team is accepted pursuant to § 3420.4-3(c) of this title. In cases where the regional coal team's advice is not accepted, a written explanation of the reasons for not accepting the advice shall be provided to the regional coal team and made available for public review.

(e) Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. Participation may be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct surface management responsibilities in areas potentially affected by coal management decisions. However, at every point in the deliberations, the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

(f) If a state declines to participate under this section in the coal-related activities of the Department:

(1) The Department may take action authorized in Group 3400 of this title in a coal production region wholly within such a state without forming a regional coal team, and

(2) The Department may form a regional coal team without a representative of the Governor of such a state in any multi-state coal production region.

(g) The regional coal team shall function under the general provisions of the cooperative procedures of subpart 1784 of this title.

[44 FR 42609, July 19, 1979; 44 FR 56339, Oct. 1, 1979, as amended at 47 FR 33134, 33135, July 30, 1982; 51 FR 18887, May 23, 1986]

§ 3400.5 Coal production regions.

The Bureau of Land Management shall establish by publication in the FEDERAL REGISTER coal production regions. A coal production region may be changed or its boundaries altered by publication of a notice of change in the FEDERAL REGISTER. Coal production regions shall be used for establishing regional leasing levels under § 3420.2 of this title. Coal production regions shall be used to establish areas in which leasing shall be conducted under § 3420.3 of this title and for other purposes of the coal management program.

[47 FR 33135, July 30, 1982]

§ 3400.6 Minimum comment period.

Unless otherwise required in Group 3400 of this title, a minimum period of 30 days shall be allowed for public review and comment where such review is required for Federal coal management program activities under Group 3400 of this title.

[51 FR 18887, May 23, 1986]

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

Sec.

3410.0-1 Purpose.
3410.0-2 Objective.
3410.0-3 Authority.
3410.1 Exploration licenses: Generally.
3410.1-1 Lands subject to exploration licenses.
3410.1-2 When an exploration license is required.
3410.2 Prelicensing procedures.
3410.2-1 Application for an exploration license.
3410.2-2 Environmental analysis.
3410.2-3 Surface management agency.
3410.3 Exploration licenses.
3410.3-1 Issuance and termination of an exploration license.
3410.3-2 Limitations on exploration licenses.
3410.3-3 Operating regulations.
3410.3-4 Bonds.
3410.4 Collection and submission of data.
3410.5 Use of surface.

AUTHORITY: 30 U.S.C. 181 *et seq.*

SOURCE: 44 FR 42613, July 19, 1979, unless otherwise noted.

Subpart 3410—Exploration Licenses

§ 3410.0-1 Purpose.

This subpart provides for the issuance of licenses to explore for coal deposits subject to disposal under Group 3400.

§ 3410.0-2 Objective.

The objective of this subpart is to allow private parties singularly or jointly to explore coal deposits to obtain geological, environmental, and other pertinent data concerning the coal deposits.

§ 3410.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(b)).

§ 3410.1 Exploration licenses: Generally.

§ 3410.1-1 Lands subject to exploration licenses.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary that are subject to leasing, § 3400.2;

(2) Lands administered by the Secretary of Agriculture through the Forest Service or other agency that are subject to leasing, § 3400.2;

(3) Lands which have been conveyed by the United States subject to a reservation to the United States of the mineral or coal deposits, to the extent that those deposits are subject to leasing under § 3400.2; and

(4) Acquired lands set apart for military or naval purposes.

(b) No exploration license shall be issued for lands included in an existing coal lease.

§ 3410.1-2 When an exploration license is required.

(a) No person may conduct exploration activities for commercial purposes, including sale of data acquired during exploration, on lands subject to this subpart without an exploration license.

(b) An exploration license shall not be required for casual use.

(c) Exploration activities conducted without an exploration license in violation of this section shall constitute a trespass, and shall be subject to the provisions of 43 CFR 9239.5-3(f).

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982]

§ 3410.2 Prelicensing procedures.

§ 3410.2-1 Application for an exploration license.

(a) Exploration license applications shall be submitted at the Bureau of Land Management State Office having jurisdiction over the lands covered in the application (43 CFR subpart 1821). The applications shall be subject to the following requirements:

(1) No specified form of application is required.

(2) An area in a public land survey state for which an application is filed shall be described by legal description or, if on unsurveyed lands, by metes and bounds, in accordance with § 3471.1-1(d)(1) of this title. An application for an exploration license on acquired lands shall describe the area according to the description in the deed or document by which the United States acquired title in accordance with § 3471.1-1(d)(2) of this title.

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of § 3482.1(a) of this title.

(4) Each application and its supporting documents shall be filed with a nonrefundable filing fee (43 CFR 3473.2).

(5) Exploration license applications shall normally cover no more than 25,000 acres in a reasonably compact area and entirely within one state. An application for an exploration license covering more than 25,000 acres must include a justification for an exception to the normal acreage limitation.

(b) Nothing in this subpart shall preclude the authorized officer from issuing a call for expressions of leasing interest in an area containing exploration licenses or applications for exploration licenses.

(c) Applicants for exploration licenses shall be required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis.

(1) Immediately upon the filing of an application for an exploration license the applicant shall publish a "Notice of Invitation," approved by the authorized officer, once every week for 2 consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice shall contain an invitation to the public to participate in the exploration under the license and shall contain the location of the Bureau of Land Management office in which the application shall be available for inspection. Copies of the Notice of Invitation shall be filed with the authorized officer at the time of publication by the applicant, for posting in the proper Bureau of Land Management Office and for Bureau of Land Management's publication of the

Notice of Invitation in the FEDERAL REGISTER.

(2) Any person who seeks to participate in the exploration program contained in the application shall notify the authorized officer and the applicant in writing within 30 days after the publication in the FEDERAL REGISTER. The authorized officer may require modification of the original exploration plan to accommodate the legitimate exploration needs of persons seeking to participate, and to avoid the duplication of exploration activities in the same area, or may notify the person seeking to participate that the person should file a separate application for an exploration license.

(d) An application to conduct exploration which could have been conducted as a part of exploration under an existing or recent coal exploration license may be rejected.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 50 FR 8626, Mar. 4, 1985]

§ 3410.2-2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer shall prepare an environmental assessment or environmental impact statement, if necessary, of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. No exploration license shall be issued if the exploration would:

(1) Result in disturbance that would cause significant and lasting degradation to the lands or injury to improvements, or in any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quantity, quality or hydrologic conditions of the coal deposits; or

(2) Jeopardize the continued existence of a threatened or endangered species of fauna or flora or destroy or cause adverse modification to its critical habitat. No exploration license shall be issued until after compliance with sections 105 and 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) with respect to any cultural resources which might be affected by any activity under the exploration license.

(b) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the lands disturbed by the exploration.

[47 FR 33135, July 30, 1982, as amended at 50 FR 8626, Mar. 4, 1985]

§ 3410.2-3 Surface management agency.

The authorized officer may issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only in accordance with those conditions prescribed by the surface management agency concerning the use and protection of the nonmineral interests in those lands.

[44 FR 42613, July 19, 1979. Redesignated at 47 FR 33135, July 30, 1982]

§ 3410.3 Exploration licenses.

§ 3410.3-1 Issuance and termination of an exploration license.

(a) The authorized officer has the discretion to issue an exploration license or to reject the application therefor under this subpart.

(b) An exploration license shall become effective on the date specified by the authorized officer as the date when exploration activities may begin. An exploration license shall not be valid for more than two years from its effective date.

(c) The approved exploration plan shall be attached and made a part of each exploration license.

(d) Subject to the continued obligation of the licensee and the surety company to comply with the terms and conditions of the exploration license, the exploration plan, and the regulations, a licensee may relinquish an exploration license for all or any portion of the lands covered by it. A relinquishment shall be filed in the Bureau of Land Management State Office in which the original application was filed. See 43 CFR subpart 1821.

(e) An exploration license may be cancelled by the authorized officer for noncompliance with its terms and conditions, the exploration plan, or the regulations, after the authorized officer has notified the licensee of the violation(s) in writing and the licensee has failed to correct the violation(s) within the period prescribed in the notice.

(f) Should a licensee request a modification to the exploration plan, the authorized officer may approve the modification if geologic or other conditions warrant.

(g) When unforeseen conditions that could result in substantial disturbance to the natural land surface or damage to the environment or improvements are encountered, or when geologic or other physical conditions warrant a modification in the approved exploration plan:

(1) The authorized officer may adjust the terms and conditions of the exploration license, or

(2) The authorized officer may direct adjustment in or approve modification of the exploration plan. If the licensee does not concur in the adjustment of the terms and conditions of the exploration license and exploration plan, he/she may, under 43 CFR part 4, appeal the decision modifying the license, or he/she may relinquish the exploration license.

(h) Exploration licenses shall not be extended. Exploration operations may not be conducted after the exploration license has expired. The licensee may apply for a new exploration license as described in this section. A new exploration license may be issued simultaneously with the termination of the existing exploration license.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 47 FR 38131, Aug. 30, 1982; 50 FR 8626, Mar. 4, 1985]

§ 3410.3-2 Limitations on exploration licenses.

The issuance of exploration licenses for an area shall not preclude the issuance of a Federal coal lease under applicable regulations for that area. If such a lease is issued for lands included in an exploration license, the authorized officer shall cancel the exploration license on the effective date of the lease for those lands which are common to both.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982]

§ 3410.3-3 Operating regulations.

The licensee shall comply with the provisions of the operating regulations of the Bureau of Land Management (43 CFR part 3480). Copies of the operating regulations may be obtained from the authorized officer. Authorized representatives of the Secretary and, where appropriate the surface management agency shall be permitted to inspect the premises and operations. The licensee shall allow the free ingress and egress of Government officers and other persons using the land under authority of the United States.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 50 FR 8626, Mar. 4, 1985]

§ 3410.3-4 Bonds.

(a) Bonding provisions in subpart 3474 of this chapter apply to this subpart.

(b) Prior to issuing an exploration license, the authorized officer shall ensure that the amount of the bond to be furnished is sufficient:

(1) To assure compliance with the terms and conditions of the exploration license and exploration plan; and

(2) In the absence of an agreement between the exploration licensee and the surface owner so providing, to assure compensation for damages to surface improvements made by surface owners where an exploration license embraces such lands. In no event shall the amount of such bond be less than $5,000.

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan and the regulations, or upon discontinuance of exploration operations and completion of needed reclamation to the satisfaction of the authorized officer, and where appropriate, the surface management agency, the authorized officer shall terminate the period of liability of the bond.

(d) Where the surface of the land being explored is privately owned, the authorized officer shall have the authority to terminate or adjust the period of liability and/or the amount of liability under the bond. The authorized officer shall provide, 30 days prior to the effective date of termination of the period of liability under the bond, a notice of termination to enable the surface owner to inspect the property and notify the authorized officer, in writing, of any deficiencies in reclamation. Should the licensee and any surface owner be unable to agree on the adequacy of the reclamation, the authorized officer shall make the final determination.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33135, July 30, 1982; 48 FR 37655, Aug. 19, 1983; 50 FR 8626, Mar. 4, 1985]

§ 3410.4 Collection and submission of data.

(a) The authorized officer may require the applicant to collect ground and surface water data that are available to the licensee in the conduct of the approved exploration plan.

(b) The licensee shall furnish the authorized officer copies of all data (including, but not limited to, geological, geophysical and core drilling analyses) obtained during exploration in a form requested by the authorized officer. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (43 CFR 2.20 and 3481.3)

[44 FR 42613, July 19, 1979, as amended at 47 FR 33136, July 30, 1982; 50 FR 8626, Mar. 4, 1985]

§ 3410.5 Use of surface.

(a) Operations under these regulations shall not unreasonably interfere with or endanger operations authorized under any other Act or regulation.

(b) The licensee shall comply with all applicable Federal, state and local laws and regulations, including the regulations.

[44 FR 42613, July 19, 1979, as amended at 47 FR 33136, July 30, 1982]

PART 3420—COMPETITIVE LEASING

Subpart 3420—Competitive Leasing

Sec.
3420.0-1 Purpose.
3420.0-2 Objectives.
3420.0-3 Authority.
3420.1 Procedures.
3420.1-1 Lands subject to evaluation for leasing.
3420.1-2 Call for coal resource and other resource information.
3420.1-3 Special leasing opportunities.
3420.1-4 General requirements for land use planning.
3420.1-5 Hearing requirements.
3420.1-6 Consultation with Federal surface management agencies.
3420.1-7 Consultation with states and Indian tribes.
3420.1-8 Identification of lands as acceptable for further consideration.
3420.2 Regional leasing levels.
3420.3 Activity planning: The leasing process.
3420.3-1 Area identification process.
3420.3-2 Expressions of leasing interest.
3420.3-3 Preliminary tract delineation.
3420.3-4 Regional tract ranking, selection, environmental analysis and scheduling.
3420.4 Final consultations.
3420.4-1 Timing of consultation.
3420.4-2 Consultation with surface management agencies.
3420.4-3 Consultation with Governors.
3420.4-4 Consultation with Indian tribes.
3420.4-5 Consultation with the Attorney General.
3420.5 Adoption of final regional lease sale schedule.
3420.5-1 Announcement.
3420.5-2 Revision.
3420.6 Reoffer of tracts not sold in previous regional lease sales.

Subpart 3422—Lease Sales

3422.1 Fair market value and maximum economic recovery.
3422.2 Notice of sale and detailed statement.
3422.3 Sale procedures.
3422.3-1 Bidding systems.
3422.3-2 Conduct of sale.
3422.3-3 Unsurveyed lands.
3422.3-4 Consultation with the Attorney General.
3422.4 Award of lease.

Subpart 3425—Leasing on Application

3425.0-1 Purpose.
3425.0-2 Objective.

Sec.

3425.1 Application for lease.
3425.1-1 Where filed.
3425.1-2 Contents of application.
3425.1-3 Qualifications of the applicant.
3425.1-4 Emergency leasing.
3425.1-5 Leasing outside coal production regions.
3425.1-6 Hardship leases.
3425.1-7 Preliminary data.
3425.1-8 Rejection of applications.
3425.1-9 Modification of application area.
3425.2 Land use plans.
3425.3 Environmental analysis.
3425.4 Consultation and sale procedures.
3425.5 Lease terms.

Subpart 3427—Split Estate Leasing

3427.0-1 Purpose.
3427.0-3 Authority.
3427.0-7 Scope.
3427.1 Deposits subject to consent.
3427.2 Procedures.
3427.3 Validation of information.
3427.4 Pre-existing consents.
3427.5 Unqualified surface owners.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-531 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Small Business Act of 1953, as amended (15 U.S.C. 631 *et seq.*).

SOURCE: 44 FR 42615, July 19, 1979, unless otherwise noted.

Subpart 3420—Competitive Leasing

§ 3420.0-1 Purpose.

This subpart sets forth how the Department will conduct competitive leasing of rights to extract Federal coal.

§ 3420.0-2 Objectives.

The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental assessment or environmental impact statement processes; to promote the timely and orderly development of publicly owned coal resources; to ensure that coal deposits are leased at their fair market value; and to ensure that coal deposits are developed in consultation, cooperation and coordination with the public, state and local governments, Indian tribes and involved Federal agencies.

[47 FR 33136, July 30, 1982]

§ 3420.0-3 Authority.

(a) The regulations in this part are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) The regulations in this part implement: (1) Primarily section 2(a) of the Mineral Leasing Act of 1920, as amended by sections 2 and 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); and (2) the Small Business Act of 1953, as amended (15 U.S.C. 631 *et seq.*).

§ 3420.1 Procedures.

§ 3420.1-1 Lands subject to evaluation for leasing.

All lands subject to coal leasing under the mineral leasing laws are subject to evaluation under this subpart (43 CFR 3400.2).

[44 FR 42615, July 19, 1979. Redesignated at 47 FR 33136, July 30, 1982]

§ 3420.1-2 Call for coal resource and other resource information.

(a) Prior to or as part of the initiation or update of a land use plan or land use analysis, a Call for Coal and Other Resource Information shall be made to formally solicit indications of interest and information on coal resource development potential and on other resources which may be affected by coal development for lands in the planning unit. Industry, State and local governments and the general public may submit information on lands that should be considered for coal leasing, including statements describing why the lands should be considered for leasing.

(b) Proprietary data marked as confidential may be submitted in response to the Call for Coal and Other Resource Information, however, all such proprietary data shall be submitted to the authorized officer only. Data marked as confidential shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(c) The Call for Coal and Other Resource Information may be combined with the notice of intent to conduct land use planning published in accordance with § 1601.3(g) of this title or with the issue identification process in accordance with part 1600 of this title. If the agency conducting land use planning is other than the Bureau of Land Management, that agency may combine the Call for Coal and Other Resource Information with its land use planning process at the appropriate step.

[47 FR 33136, July 30, 1982, as amended at 50 FR 8626, Mar. 4, 1985; 51 FR 18888, May 23, 1986]

§ 3420.1–3 Special leasing opportunities.

(a) The Secretary shall, under the procedures established in this subpart, including § 3420.3 of this title, reserve and offer a reasonable number of lease tracts through competitive lease sales open only to a restricted class of potential bidders. Except for the limitation on bidding contained in paragraph (b) of this section, all requirements in this subpart apply equally to special leasing opportunities, including the requirement that coal be leased at its fair market value.

(b) Special leasing opportunities shall be provided for two classes of potential lessees:

(1) *Public bodies.* (i) Only public bodies with a definite plan for producing energy for their own use or for their members or customers shall bid for leases designated as special leasing opportunities for public bodies. To qualify as a definite plan, a plan must clearly state the intended use of the coal and have been approved by the governing board of the public body submitting the plan. In the event an electric generating station which will produce energy for the public body is either jointly owned with or participated in by others, or both, the definite plan shall assure that the public body's proportionate part of the energy produced is utilized pursuant to this paragraph.

(ii) Each public body shall submit the information specified in § 3472.2-5(a) (1) and (2) of this title as part of its expression of leasing interest or upon submission of a bid if no expression of leasing interest is made. The information specified in § 3472.2–5(a) (3) and (4) of this title shall be submitted within 60 days after submission of an expression of leasing interest or lease bid if no expression of leasing interest is made.

(iii) The Secretary may designate, during the process of preparing a regional lease sale schedule, certain coal lease tracts for special leasing opportunities for public bodies only if a public body has submitted an expression of leasing interest under § 3420.3-2, requesting that the procedures of this section apply.

(iv) Leases issued under this section to public bodies may be assigned only to other public bodies, or to a person who will mine the coal on behalf of and for the use of the public body, or to a person for the limited purpose of creating a security interest in favor of a lender who agrees to be obligated to mine the coal on behalf of the public body.

(2) *Small businesses.* (i) When necessary to comply with the requirements of the Small Business Act, the Secretary shall designate a reasonable number of tracts for special leasing opportunities for businesses qualifying under 13 CFR part 121.

(ii) Leases issued under this section may be assigned only to other small businesses qualifying under 13 CFR part 121.

(c) Potential lessees qualifying for special leasing opportunities may participate in competitive lease sales not designated as special leasing opportunities and shall not be required to submit the evidence and information required specifically for a special leasing opportunity to participate.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33136, July 30, 1982]

§ 3420.1–4 General requirements for land use planning.

(a) The Secretary may not hold a lease sale under this part unless the lands containing the coal deposits have been included in a comprehensive land use plan or land use analysis and unless the sale is compatible with, and subject to, any relevant stipulations, guidelines and standards set out in that plan or analysis.

(b)(1) The Bureau of Land Management shall prepare comprehensive land use plans and land use analyses for lands it administers in conformance with 43 CFR part 1600.

(2) The Department of Agriculture or any other Federal agency with surface management authority over lands subject to leasing shall prepare comprehensive land use plans or land use analyses for lands it administers.

(3) The Secretary may lease in any area where it is found either that there is no Federal interest in the surface or that the coal deposits in an area are insufficient to justify the costs of a Federal land use plan upon completion of a land use analysis in accordance with this section and 43 CFR part 1600.

(c) In an area of Federal lands not covered by a completed comprehensive land use plan or scheduled for comprehensive land use planning, a member of the public may request the appropriate Bureau of Land Management State Office to prepare a land use analysis for coal related uses of the land as provided for in this group.

(d) A comprehensive land use plan or land use analysis shall contain an estimate of the amount of coal recoverable by either surface or underground mining operations or both.

(e) The major land use planning decision concerning the coal resource shall be the identification of areas acceptable for further consideration for leasing which shall be identified by the screening procedures listed below:

(1) Only those areas that have development potential may be identified as acceptable for further consideration for leasing. The Bureau of Land Management shall estimate coal development potential for the surface management agency. Coal companies, State and local governments and the general public are encouraged to submit information to the Bureau of Land Management at any time in connection with such development potential determinations. Coal companies, State and local governments and members of the general public may also submit nonconfidential coal geology and economic data during the inventory phase of planning to the surface management agency conducting the land use planning. Where such information is determined to indicate development potential for an area, the area may be included in the land use planning for evaluation for coal leasing.

(2) The Bureau of Land Management or the surface managing agency conducting the land use planning shall, using the unsuitability criteria and procedures set out in subpart 3461 of this title, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of mining. The unsuitability assessment shall be consistent with any decision of the Office of Surface Mining Reclamation and Enforcement to designate lands unsuitable or to terminate a designation in response to a petition.

(3) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values and land uses that are locally, regionally or nationally important or unique and that are not included in the unsuitability criteria discussed in paragraph (e) of this section. Such values and uses include, but are not limited to, those identified in section 522(a)(3) of the Surface Mining Reclamation and Control Act of 1977 and as defined in 30 CFR 762.5. In making these multiple use decisions, the Bureau of Land Management or the surface management agency conducting the land use planning shall place particular emphasis on protecting the following: Air and water quality; wetlands, riparian areas and sole source aquifers; the Federal lands which, if leased, would adversely impact units of the National Park System, the National Wildlife Refuge System, the National System of Trails, and the National Wild and Scenic Rivers System.

(4)(i) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (gg) (1) and (2) of § 3400.0-5 of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(ii) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground techniques if there are no acceptable alternative areas available to meet the regional leasing level.

(iii) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:

(A) The number of surface owners who have expressed their preference against mining by other than underground techniques is reduced below a significant number because such surface owners have given written consent for such mining or have transferred ownership to unqualified surface owners; and

(B) The land use plan is amended accordingly.

(f) In its review of cumulative impacts of coal development, the regional coal team shall consider any threshold analysis performed during land-use planning as required by § 1610.4-4 of this title and shall apply this analysis, where appropriate, to the region as a whole.

44 FR 42615, July 19, 1979. Redesignated nd amended at 47 FR 33136, July 30, 1982; 0 FR 8626, Mar. 4, 1985; 51 FR 18888, May 3, 1986; 52 FR 46472, Dec. 8, 1987]

3420.1-5 Hearing requirements.

After public notice, the Bureau of and Management or other surface management agency shall conduct a public hearing on the proposed comrehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under part 1600 of this title of this chapter shall fulfill this requirement.

[47 FR 33137, July 30, 1982]

§ 3420.1-6 Consultation with Federal surface management agencies.

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, or where the Bureau of Land Management manages lands on which coal development may impact land units of other Federal agencies, the Bureau of Land Management shall consult with the other agency to jointly determine the acceptability for further consideration for leasing of the potentially impacted lands the other agency administers or lands managed by the Bureau of Land Management that may impact lands of another agency.

[52 FR 46473, Dec. 8, 1987]

§ 3420.1-7 Consultation with states and Indian tribes.

Before adopting a comprehensive land use plan or land use analysis that makes an assessment of lands acceptable for further consideration for leasing, the Bureau of Land Management or other surface management agency shall consult with the state Governor and the state agency charged with the responsibility for maintaining the state's unsuitability program (43 CFR 3461.4-1). Where a tribal government administers areas within or near the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, the Bureau shall consult with the tribal government.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33137, July 30, 1982]

§ 3420.1-8 Identification of lands as acceptable for further consideration.

(a) Identification of lands as acceptable for further consideration for leasing will be made in the adoption of a comprehensive land use plan or land use analysis. Any lands identified as acceptable may be further considered for leasing under § 3420.3 of this title.

(b) Activity planning shall begin with a regional coal team meeting to review market analyses and land-use planning summaries. The market analyses and land-use planning summaries shall be avaiable at least 45 days prior to such meeting.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33137, July 30, 1982; 51 FR 18888, May 23, 1986]

§ 3420.2 Regional leasing levels.

This section sets out the process to be followed in establishing regional leasing levels. Regional leasing levels shall be established by the Secretary. The Secretary shall particularly rely upon the advice and assistance of affected State Governors in ensuring that leasing levels have properly considered social, environmental and economic impacts and constraints.

(a) The regional coal teams shall be the forum through which initial leasing level recommendations are transmitted to the Secretary. Initial leasing level recommendations shall be developed as follows:

(1) The appropriate Bureau of Land Management State Director on the regional coal team, as designated by the regional coal team chairperson, shall prepare a broadly stated range of initial leasing levels for the region. This range of initial leasing levels shall be based on information available to the State Director, including land use planning data, the results of the call for coal resource information held under § 3420.1-2 of this subpart, the results of the call for expressions of leasing interest held under § 3420.3-2 of this subpart and other considerations, including input and advice from the Governors of the affected States regarding assumptions, data, and other factors pertinent to the region;

(2) This initial range of leasing levels shall be made available to the other members of the regional coal team for review and comment. This review shall be designed to ensure consideration of relevant social, environmental and economic factors of which the Secretary should be aware in setting leasing levels;

(3) Governors of affected States shall be requested by the regional coal team chairperson to provide comments and recommendations concerning the leasing levels through the Governor's representatives on the regional coal team. Governors may use any methodologies, systems or procedures available to determine their recommendations;

(4) The regional coal team chairperson shall call upon the team members to present their findings and recommendations on the initial leasing levels. The chairperson shall refer the members' recommendations to an appropriate Bureau State Director serving on the team. The State Director shall: (i) Ensure the recommendations are in an appropriate format; (ii) add any additional information from the Bureau of Land Management data sources which may be available and pertinent to leasing level decision making; (iii) address any questions and clarify any issues raised by the members' recommendations; and (iv) outline any additional alternative leasing levels. The regional coal team shall consider the State Director's review and shall transmit to the Secretary alternative leasing levels and a preferred leasing level presented in ranges of tons to be offered for lease. All Governor's comments and recommendations shall also be transmitted to the Secretary, without change, as a part of the team transmittal; and

(5) The regional coal team transmittal to the Secretary shall be made through the Director, who may provide additional data and recommendations, but only as separate documentation.

(b) The Secretary, upon receipt of the regional coal team transmittal shall initiate consultations, in writing with the Secretary of Energy, the Attorney General and affected Indian tribes. The Secretary shall establish leasing levels by region for the purposes of approximating the amount of coal to be offered through proposed lease sale schedules after consideration of potential policy conflicts or problems concerning, but not limited to:

(1) The Department's responsibility for the management, regulation and conservation of natural resources; and

(2) The capabilities of Federal lands and Federal coal resources to meet the proposed leasing levels, and the contributions State and privately owned coal lands can make.

(c) Leasing levels shall be based on the following factors:

(1) Advice from Governors of affected States as expressed through the regional coal team;

(2) The potential economic, social and environmental effects of coal leasing on the region, including recommendations from affected Indian tribes;

(3) Expressed industry interest in coal development in the region and indications of the demand for coal reserves;

(4) Expressed interests for special opportunity sales;

(5) Expected production from existing Federal coal leases and non-Federal coal holdings;

(6) The level of competition within the region and recommendations from the Department of Justice;

(7) U.S. coal production goals and projections of future demand for Federal coal;

(8) Consideration of national energy needs; and

(9) Other pertinent factors.

(d) Prior to determining a final leasing level, the Secretary shall consult with the Governors of affected States to obtain final comments and recommendations. The Secretary shall then establish a final leasing level for the proposed coal lease sale.

(e) The levels shall be established for each coal production region where activity planning is conducted under the provisions of § 3420.3 of this subpart. The levels shall be developed separately for each region, but levels for 2 or more regions may be developed at the same time as the Secretary deems appropriate. Leasing levels may be stated in terms of a range of values.

(f) The leasing levels established for any given region shall become the basis for the proposed action for study in the regional coal lease sale environmental impact statement prepared pursuant to § 3420.3-4 of this subpart. The Secretary's final decision on which coal lease tracts, if any, within a region to offer for sale, and the schedule for the offering of such tracts shall be based on all information at the Secretary's disposal at the time of the decision.

[47 FR 33137, July 30, 1982, as amended at 48 FR 37655, Aug. 19, 1983; 50 FR 8626, Mar. 4, 1985]

§ 3420.3 Activity planning: The leasing process.

§ 3420.3–1 Area identification process.

(a) This section describes the process for identifying, ranking, analyzing, selecting, and scheduling lease tracts after land use planning has been completed. This process constitutes the "activity planning" aspect of the coal management program. Activity planning may occur where areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1-4 of this subpart.

(b) Split estate land otherwise acceptable for further consideration for leasing shall, upon verfication of a refusal to consent received from a qualified surface owner under § 3427.2 of this title, be deleted from further activity planning.

(c) Each regional coal team established under § 3400.4 of this title shall:

(1) Guide tract delineation and preparation of site specific analyses of delineated tracts;

(2) Rank delineated tracts, select tracts that meet the leasing level established by the Secretary, and identify all alternative tract combinations to be analyzed in the regional lease sale environmental impact statement;

(3) Guide the preparation of the regional lease sale environmental impact statement; and

(4) Recommend a regional coal lease sale schedule to the Director.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33138, July 30, 1982]

§ 3420.3-2 Expressions of leasing interest.

(a) A call for expressions of leasing interest may be made after areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1-4 of this subpart.

(b) Each call for expressions of leasing interest shall be published as a notice in the FEDERAL REGISTER and in at least 1 newspaper of general circulation in each affected state.

(c) All information submitted under this subpart shall be available for public inspection and copying upon request. Data which are considered proprietary shall not be submitted as part of an expression of leasing interest.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33138, July 30, 1982]

§ 3420.3-3 Preliminary tract delineation.

(a) Tracts may be delineated in any areas acceptable for further consideration for leasing whether or not expressions of leasing interest have been received for those areas.

(b) When public bodies have submitted expressions of leasing interest, tracts shall be delineated when and where technically feasible for public body special leasing opportunities in accordance with § 3420.1-3 of this subpart.

(c) In cooperation with the Small Business Administration, tracts may be delineated when and where technically feasible for small business special leasing opportunities in accordance with § 3420.1-3 of this title.

(d) Other tracts to be used in a lease or fee exchange (43 CFR subparts 3435 and 3436) may be delineated.

(e) A tract profile shall be formulated for each tract. The profile shall include:

(1) A summary of the information used in the delineation of the tract, and

(2) A site-specific environmental inventory and preliminary analysis.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33138, July 30, 1982]

§ 3420.3-4 Regional tract ranking, selection, environmental analysis and scheduling.

(a)(1) Upon completion of tract delineation and preparation of the tract profiles, the regional coal team shall rank the tracts in classes of high, medium or low desirability for coal leasing. Three major categories of consideration shall be used in tract ranking: coal economics; impacts on the natural environment; and socioeconomic impacts. The subfactors to be considered under each category shall be those determined by the regional coal team as appropriate for that region, and shall be published in the regional lease sale environmental impact statement required by this section. Tracts may also be ranked for other coal management purposes, such as emergency leasing under subpart 3425 of this title or exchanges under subparts 3435 and 3436 of this title.

(2) The regional coal team may modify tract boundaries being ranked, if appropriate, to reflect additional information.

(3) In ranking tracts, the regional coal team shall solicit the recommendations of the Federal and State agencies having appropriate expertise, including the Geological Survey, the Fish and Wildlife Service and the Federal surface management agency, if other than the Bureau of Land Management.

(4) Where Federal leasing decisions are likely to have impacts on lands held in trust for an Indian tribe, the regional coal team shall solicit the recommendations of the tribe and the Bureau of Indian Affairs.

(5) A statement that descriptions of the tracts to be ranked are available shall be included with the notice announcing any regional coal team meeting at which those tracts shall be ranked. An opportunity for public comment on the tract rankings shall be provided during the regional coal team meeting.

(b)(1) Upon completion of tract ranking, the regional coal team shall select at least 1 combination of tracts that approximates the regional leasing level. One combination of tracts within the regional leasing level shall be identified as the proposed action for study in the environmental impact statement. The team shall also select tract combinations representing alternative leasing levels. The team may identify alternative combinations of tracts within a leasing level.

(2) The regional coal team may adjust the tract ranking and select tracts to reflect considerations including:

(i) The compatibility of coal quality, coal type and market needs;

(ii) Environmental and socioeconomic impacts;

(iii) The compatibility of reserve size and demand distribution for tracts;

(iv) Public opinion;

(v) Avoidance of future emergency lease situations; and

(vi) Special leasing opportunity requirements.

(c) After tract ranking and selection, a regional lease sale environmental impact statement on all tract combinations selected by the regional coal team for the various leasing levels and all other reasonable alternative leasing levels shall be prepared by the Bureau of Land Management in accordance with the provisions of the National Environmental Policy Act. The statement shall consider both:

(1) The site-specific potential environmental impacts of each tract being considered for lease sale; and

(2) The intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal and noncoal development activities.

(d) The results of the ranking and selection process, including the tract rankings, the tract selected and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement required by paragraph (c) of this section. Detailed information on each of the tracts shall be available for inspection in the Bureau of Land Management State offices that have jurisdiction over lands within the coal production region (See 43 CFR subpart 1821).

(e) Public hearings shall be held in the region following the release of the draft regional lease sale environmental impact statement to announce and discuss the results of the ranking and selection process and the potential impacts, including proposed mitigation measures.

(f) Upon the close of the comment period on the draft environmental impact statement, the regional coal team shall analyze the comments and make any appropriate revisions in the tract ranking and selection. The final regional lease sale environmental impact statement shall reflect such revisions.

(g) Upon completion and release of the final regional lease sale environmental impact statement, the regional coal team shall recommend specific tracts for lease sale and a lease sale schedule. The chairperson shall submit the recommendations to the Director. Any disagreement as to the recommendation among the team shall be documented and submitted by the chairperson along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his/her decision, together with the recommendation of the team and any recommendations the Director may wish to make.

(h) The tract ranking, selection and scheduling process and the regional lease sale environmental impact statement shall be revised or repeated as needed. The Secretary may, in consultation with the Governor(s) of the affected State(s) and surface management agencies, initiate or postpone the process to respond to considerations such as major land use planning updates, new tract delineations or increases or decreases in the leasing levels.

[47 FR 33138, July 30, 1982; 47 FR 38131, Aug. 30, 1982, as amended at 48 FR 37655, Aug. 19, 1983; 51 FR 18888, May 23, 1986]

§ 3420.4 Final consultations.

§ 3420.4–1 Timing of consultation.

Following the release of the final regional lease sale environmental impact statement, and prior to adopting a regional lease sale schedule, the Secretary shall engage in formal consultation as specified in §§ 3420.4-2 through 3420.4-5 of this title.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

§ 3420.4-2 Consultation with surface management agencies.

(a) The Secretary, for any proposed lease tract containing lands the surface of which is under the jurisdiction of any agency other than the Department, shall request that the agency: (1) Consent, if it has not already done so, to the issuance of the lease (43 CFR 3400.3-1), and (2) if it consents, prescribe the terms and conditions the Secretary will impose in any lease which the head of the agency requires for the use and protection of the nonmineral interests in those lands.

(b) The Secretary may prescribe additional terms and conditions that are consistent with the terms proposed by the surface management agency to protect the interest of the United States and to safeguard the public welfare.

[44 FR 42615, July 19, 1979. Redesignated at 47 FR 33139, July 30, 1982]

§ 3420.4-3 Consultation with Governors.

(a) The Secretary shall consult the Governor of the state in which any tract proposed for sale is located. The Secretary shall give the Governor 30 days to comment before adopting a regional lease sale schedule or, for lease applications, before publishing a notice of sale for any tract within the State.

(b) When a tract proposed for lease sale within the boundaries of a National Forest would, if leased, be mined by surface mining methods, the Governor of the state in which the land to be leased is located shall be so notified by the Secretary. If the Governor fails to object to the lease sale proposal in 60 days, the Secretary may publish a notice of sale, including that tract. If, within the 60 day period, the Governor, in writing, objects to the lease sale proposal, the Secretary may not publish a notice of sale for that tract. Publication of the notice of sale shall be held in abeyance for 6 months from the date that the Governor objects. The Governor may, during this six-month period, submit a written statement of reasons why the tract should not be proposed for lease sale, and the Secretary shall, on the basis of this statement, reconsider the lease sale proposal.

(c) Before determining whether to conduct a lease sale, the Secretary shall seek the recommendation of the Governor of the State(s) in which the lands proposed to be offered for lease are located as to whether or not to lease such lands and what alternative actions are available and what special conditions could be added to the proposed lease(s) to mitigate impacts. The Secretary shall accept the recommendations of the Governor(s) if he determines that they provide for a reasonable balance between the national interest and the State's interests. The Secretary shall communicate to the Governor(s) in writing and publish in the FEDERAL REGISTER the reasons for his determination to accept or reject such Governor's recommendations.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982 48 FR 37655, Aug. 19, 1983]

§ 3420.4-4 Consultation with Indian tribes

The Secretary shall consult with any Indian tribe which may be affected by the adoption of the proposed regional lease sale schedule. The Secretary shall give the tribe 30 days in which to comment prior to adopting a lease sale schedule.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

§ 3420.4-5 Consultation with the Attorney General.

The Secretary shall consult with and give due consideration to the advice of the Attorney General before the adoption of the proposed regional lease sale schedule. The Secretary shall provide 30 days in which the Attorney General may advise the Secretary prior to adopting a lease schedule.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

§ 3420.5 Adoption of final regional lease sale schedule.

§ 3420.5-1 Announcement.

Following completion of the requirements of §§ 3420.3 and 3420.4 of this title, the Secretary shall announce the adoption of a final regional lease sale schedule. The announcement shall be published in the Federal Register and contain a legal description of each tract included in the lease sale schedule and the date when each tract has been tentatively scheduled for sale. Notice of this announcement shall be published in at least 1 newspaper of general distribution in each state within the region for which the regional lease sale schedule is adopted.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33139, July 30, 1982]

§ 3420.5-2 Revision.

(a) The Secretary may revise either the list of tracts included in the schedule or the timing of the lease sales in accordance with any alternatives which were considered in the regional lease sale environmental impact statement and during consultation under § 3420.4 of this title.

(b) Any regional lease sale schedule may be updated or replaced as a result of a new regional tract ranking, selection, and scheduling effort conducted in accordance with the provisions of § 3420.3-4 of this title.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33140, July 30, 1982]

§ 3420.6 Reoffer of tracts not sold in previous regional lease sales.

Following the offering of tracts in accordance with the procedures outlined in §§ 3420.2, 3420.3, 3420.4 and 3420.5, any tracts not sold in accordance with the above listed provisions may be reoffered for sale by the Department provided a lease sale schedule has been reviewed by the regional coal team and, after consultation with the Governor, adopted by the Secretary. Provisions of subpart 3422 shall apply to these tracts.

[48 FR 37655, Aug. 19, 1983]

Subpart 3422—Lease Sales

§ 3422.1 Fair market value and maximum economic recovery.

(a) Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value (FMV) appraisal and the maximum economic recovery (MER) of the tract or tracts proposed to be offered and on factors that may affect these 2 determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to the solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

(b) The authorized officer shall prepare a written report containing information on the mining method evaluation, estimated coal reserves by bed, coal quality assessment, royalty and lease bond recommendations and an evaluation of the public comments on the FMV and MER.

(c)(1) The authorized officer shall not accept any bid that is less than the fair market value as determined by the Department.

(2) Minimum bids shall be set on a regional basis and may be expressed in either dollars-per-acre or cents-per-ton. In no case shall the minimum bid be less than $100 per acre or its equivalent in cents-per-ton.

[47 FR 33140, July 30, 1982, as amended at 50 FR 8626, Mar. 4, 1985; 51 FR 18888, May 23, 1986]

§ 3422.2 Notice of sale and detailed statement.

(a) Prior to the lease sale, the authorized officer shall publish a notice of the proposed sale in the Federal Register and in a newspaper(s) of general circulation in the county or equivalent political subdivision in which the tracts to be sold are situated. The newspaper notice shall be published not less than once a week for 3 consecutive weeks. Such notice shall also be posted in the Bureau of Land Management State Office and shall be mailed to any surface owner of lands noticed for sale. The lease sale shall not be held until at least 30 days after such posting in the State Office.

(b) The notice shall:

(1) List the time and place of sale, the type of sale, bidding method, rental, and the description of the tract(s) being offered and the minimum bid(s) to be considered;

(2) Contain a description of the coal resources to be offered; and

(3) Contain information on where a detailed statement of the terms and conditions of the lease(s) which may result from the lease sale may be obtained.

(c) The detailed statement of the terms and conditions of the lease(s) offered and bidding instructions for sale shall:

(1) Contain an explanation of the manner in which the bids may be submitted;

(2) Contain a warning to all bidders concerning 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders;

(3) Specify that the Secretary reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason;

(4) Contain a notice that each bid shall be accompanied by the bidder's qualifications (See 43 CFR 3472.2-2);

(5) Contain a notice to bidders that the winning bidders shall have to submit the information required by the Attorney General for post-sale review (See 43 CFR 3422.3-4);

(6) If appropriate, contain (i) a copy of any written qualified surface owner consent, including purchase price, financial obligations and terms and conditions, filed and verified prior to the posting of the notice of lease sale in the appropriate Bureau of Land Management State office; or (ii) a listing of lands for which qualified surface owner consent is required prior to lease sale but has not yet been filed, along with a statement that any consent for those lands filed prior to the deadline for such filings shall be made a part of the official file and shall be available for inspection by the public;

(7) If appropriate, contain a notice that bidders shall file a statement that all information they hold relevant to written consents affecting any area offered in the sale in which the bid is submitted has been filed with the proper Bureau of Land Management State office (43 CFR subpart 1821) in accordance with the provisions of subpart 3427 of this title;

(8) Contain a copy of the proposed lease, including all terms and special stipulations; and

(9) Contain any other information deemed appropriate by the authorized officer.

(d) Each successful bidder, if any, shall reimburse the United States for a proportionate share of the cost of publishing the notice of sale as a condition of lease issuance.

[44 FR 42615, July 19, 1979. Redesignated and amended at 47 FR 33140, July 30, 1982]

§ 3422.3 Sale procedures.

§ 3422.3-1 Bidding systems.

(a) The provisions of 10 CFR part 378[1] are not applicable to this part.

(b) The Department may conduct lease sales using cash bonus—fixed royalty bidding systems or any other bidding system adopted through rulemaking procedures.

[47 FR 33140, July 30, 1982]

§ 3422.3-2 Conduct of sale.

(a)(1) Sealed bids shall be received only until the hour on the date specified in the notice of competitive leasing; all sealed bids submitted after that hour shall be returned. The authorized officer shall read all sealed bids, and shall announce the highest bid.

(2) No decision to accept or reject the high bid will be made at the time of sale.

(b) A sale panel shall convene to determine: (1) If the high bid was properly submitted; (2) if it reflects the FMV of the tract; and (3) whether the bidder is qualified to hold the lease. The recommendations of the panel shall be in writing and sent to the authorized officer who shall make the final decision to accept a bid or reject all bids. The sale panel's recommendation and the authorized officer's written decision shall be entered in the case file for the offered tract. The successful bidder shall be notified in writing. The Department reserves the right to reject any and all bids regardless of the amount offered, and shall not accept any bid that is less than fair market value. The authorized officer shall notify any bidder whose bid has been rejected and include in such notice a statement of the reason for the rejection. The Department reserves the right to offer the lease to the next highest qualified bidder if the successful bidder fails to execute the lease, or is for any reason disqualified from receiving the lease.

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[1] Redesignated as 30 CFR part 260 and removed at 48 FR 1182, Jan. 11, 1983.

(c) Each sealed bid shall be accompanied by a certified check, cashier's heck, bank draft, money order, certif cate of bidding rights, personal check r cash for one-fifth of the amount of he bonus, and a qualifications statement over the bidder's own signature with respect to citizenship and inter sts held, as prescribed in § 3472.2-2 of his title.

44 FR 42615, July 19, 1979. Redesignated nd amended at 47 FR 33140, July 30, 1982]

3422.3-3 Unsurveyed lands.

If the land is unsurveyed, the suc essful bidder shall not be given notice o comply with the requirements of 3422.4 of this title for lease issuance ntil the land has been surveyed as rovided in § 3471.1-2 of this title.

3422.3-4 Consultation with the Attorney General.

(a) Subsequent to a lease sale, but rior to issuing a lease, the authorized fficer shall require the successful dder to submit on a form or in a rmat approved by the Attorney Gen al information relating to the bid r's coal holdings to the authorized ficer for transmittal to the Attorney eneral. Upon receipt of the informa on, the authorized officer shall tify the Attorney General of the oposed lease issuance, the name of e successful bidder and terms of the oposed lease sale and shall transmit e bidder's statement on coal hold gs. A description of the information quired by the Attorney General and e form or format for submission of e information may be obtained from e authorized officer.

b) Where a successful bidder has eviously submitted the currently re ired information, a reference to the e of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

(c) The authorized officer shall not issue a lease until 30 days after the Attorney General receives the notice and statement of the successful bidder's coal holdings, or the Attorney General notifies the Director that lease issuance would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. The Attorney General shall inform the successful bidders and simultaneously, the authorized officer, if the successful bidder's statement of coal holdings is incomplete or inadequate, and shall specify what information is required for the Attorney General to complete his review. The 30 day period shall stop running on the date of such notification and not resume running until the Attorney General receives the supplemental information.

(d) The authorized officer shall not issue the lease to the successful bidder, if, during the 30 day period, the Attorney General notifies the Director that the lease issuance would create or maintain a situation inconsistent with antitrust law, except after complying with paragraph (e)(2) of this section.

(e) If the Attorney General notifies the Director that a lease should not be issued, the authorized officer may:

(1) Reject all bids or many notify the Attorney General in accordance with paragraph (a) of this section that issuance of the proposed lease to the next qualified high bidder is under consideration; or

(2) Issue the lease if, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that:

(i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1976;

(ii) Issuance of the lease is consistent with the public interest; and

(iii) There are no reasonable alternatives to the issuance of the lease consistent with the Federal Coal Leasing

Amendments Act of 1976, the antitrust laws, and the public interest.

(f) If the Attorney General does not reply in writing to the notification in paragraph (a) of this section within 30 days, the authorized officer may issue a lease without waiting for the advice of the Attorney General.

(g) Information submitted to the authorized officer to comply with this section shall be treated as confidential and proprietary data if marked "confidential" by the reporting company. Confidential information shall be submitted to the authorized officer in a sealed envelope and shall be transmitted in that form to the Attorney General.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33140, July 30, 1982]

§ 3422.4 Award of lease.

(a) After the authorized officer has accepted a high qualified bid, and the Attorney General has not objected to lease issuance or the procedures in § 3422.3-4(e)(2) of this title have been completed, the authorized officer shall send 4 copies of the lease form to the successful bidder. The successful bidder shall complete, sign and return these forms and shall: pay the balance of the bonus bid, if required; pay the first year's rental; pay the proportionate share of the cost of publishing the notice of sale; and file a lease bond. Upon receipt of the above, the authorized officer shall execute the lease.

(b) If the successful bidder dies before the lease is issued, the provisions of § 3472.2-4 of this title shall apply.

(c) At least half of the acreage offered for competitive lease in any 1 year shall be offered on a deferred bonus payment basis. In a deferred bonus payment, the lessee shall pay the bonus in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next 4 anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

(d) If the successful bidder fails to comply with any requirement of paragraph (a) of this section or of § 3422.
4 of this title, the deposit on the suc
cessful bid shall be forfeited to the
United States.

(e) If the lease cannot be awarde
for reasons determined by the autho
ized officer to be beyond the control o
the successful bidder, the deposit sub
mitted with the bid shall be refunde

[47 FR 33141, July 30, 1982]

Subpart 3425—Leasing on Application

§ 3425.0-1 Purpose.

§ 3425.0-2 Objective.

The objective of this subpart is t
provide an application proces
through which the Department ma
consider holding lease sales apart fro
the competitive leasing process set o
in §§ 3420.3 through 3420.5-2 of th
title, where an emergency need for u
leased coal deposits is demonstrate
or in areas outside coal production r
gions or outside eastern activity pla
ning areas.

[44 FR 42615, July 19, 1979, as amended a
47 FR 33141, July 30, 1982]

§ 3425.1 Application for lease.

§ 3425.1-1 Where filed.

Application for a lease coverin
lands subject to leasing (43 CF
3400.2) shall be filed in the Bureau o
Land Management State Office havin
jurisdiction over the lands or minera
involved (43 CFR subpart 1821).

§ 3425.1-2 Contents of application.

No specific form of application is r
quired. Three copies of the applica
tion, including preliminary and othe
data required by this subpart shall b
filed. The lands applied for shall b
described in accordance with subpar
3471 of this title. The application mu
be accompanied by the filing fee (4
CFR 3473.2).

§ 3425.1-3 Qualifications of the applica

Any applicant for a lease shall me
the qualifications required of a lesse
as specified in subpart 3472 of th
title.

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§ 3425.1–4 Emergency leasing.

(a) An emergency lease sale may be held in response to an application under this subpart if the applicant shows:

(1) That the coal reserves applied for shall be mined as part of a mining operation that is producing coal on the date of the application, and either:

(i) The Federal coal is needed within 3 years (A) to maintain an existing mining operation at its current average annual level of production on the date of application or (B) to supply coal for contracts signed prior to July 19, 1979, as substantiated by a complete copy of the supply or delivery contract, or both; or

(ii) If the coal deposits are not leased, they would be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for would be used within 3 years; and

(2) That the need for the coal deposits shall have resulted from circumstances that were either beyond the control of the applicant or could not have been reasonably foreseen and planned for in time to allow for consideration of leasing the tract under the provisions of § 3420.3 of this title.

(b) The extent of any lease issued under this section shall not exceed 8 years of recoverable reserves at the rate of production under which the applicant qualified in paragraph (a)(1) of this section. If the applicant qualifies under both paragraphs (a)(1)(A) and (B) of this section, the higher rate applies.

(c) The authorized officer shall provide the Governor of the affected State(s) a notice of an emergency lease application when it is filed with the Bureau of Land Management.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982; 48 FR 37655, Aug. 19, 1983]

§ 3425.1–5 Leasing outside coal production regions.

A lease sale may be held in response to an application under this subpart if the application covers coal deposits which are outside coal production regions identified under § 3400.5 of this title.

[47 FR 33141, July 30, 1982]

§ 3425.1–6 Hardship leases.

The Secretary may issue a lease under this subpart based on any application listed by serial number in the modified court order in *NRDC* v. *Hughes*, 454 F. Supp. 148 (D.D.C. 1978).

§ 3425.1–7 Preliminary data.

(a) Any application for a lease shall contain preliminary data to assist the authorized officer in conducting an environmental analysis as described in § 3425.3 of this title.

(b) Such preliminary data shall include:

(1) A map, or maps, showing the topography, physical features and natural drainage patterns, existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines and drill holes; to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources that may be used in the proposed operations and facilities.

(2) A narrative statement, including:

(i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used;

(ii) The method of mining anticipated, including the best estimate of the mining sequence and production rate to be followed;

(iii) The relationship between the mining operations anticipated on the lands applied for and existing or planned mining operations, or support facilities on adjacent Federal or non-Federal lands;

(iv) A brief description, including maps or aerial photographs, as appropriate, of: The existing land use or uses within and adjacent to the lands applied for; known geologic, visual, cultural, paleontological or archaeological features; wetlands and floodplains; and known habitat of fish and wildlife—particularly threatened and endangered species—any of which may be affected by the proposed or anticipated exploration or mining operations and related facilities;

(v) A brief description of the proposed measures to be taken to control or prevent fire and to mitigate or prevent soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, adverse impacts to the social and infrastructure systems of local communities, and hazards to public health and safety; reclaim the surface; and meet other applicable laws and regulations. The applicant may submit other pertinent information that the applicant wishes to have considered by the authorized officer;

(vi) A statement which describes the intended use of the coal covered by the emergency application; and

(vii) Any other information which will show that the application meets the requirements of this subpart.

(c) The applicant may engage in casual use of the land in the application, but shall not undertake any exploration without prior authorization by exploration license, or undertake any mining operations until lease issuance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during an environmental assessment may request additional information from the applicant. Where the surface of the land is held by a qualified surface owner (§ 3400.0-5) and the mining method to be used is other than underground mining techniques, the authorized officer shall obtain documents necessary to show ownership of the surface. The applicant shall submit evidence of written consent from any qualified surface owner(s). (In accordance with subpart 3427 of this title).

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982]

§ 3425.1-8 Rejection of applications.

(a) An application for a lease shall be rejected in total or in part if the authorized officer determines that: (1) The application is not consistent with the applicable regulations; (2) issuance of the lease would compromise the regional leasing process described in § 3420.3 of this title; or (3) leasing of the lands covered by the application for environmental or other sufficient reasons, would be contrary to the public interest.

(b) Any application subject to rejection under paragraph (a) of this section shall not be rejected until the applicant is given written notice of the opportunity to provide requested missing information and fails to do so within the time specified in the decision issued for that purpose.

(c) The authorized officer shall transmit reasonable notice of the rejection of an emergency lease application to the Governor of the affected State(s).

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

§ 3425.1-9 Modification of application area.

The authorized officer may add or delete lands from an area covered by an application for any reason he/she determines to be in the public interest.

[47 FR 33141, July 30, 1982]

§ 3425.2 Land use plans.

No lease shall be offered for sale under this subpart unless the lands have been included in a comprehensive land use plan or a land use analysis, as required in § 3420.1-4 of this title. The decision to hold a lease sale shall be consistent with the appropriate comprehensive land use plan or land use analysis.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982]

§ 3425.3 Environmental analysis.

(a) Before a lease sale may be held under this subpart, the authorized officer shall prepare an environmental assessment or environmental impact statement of the proposed lease area in accordance with 40 CFR parts 1500 through 1508.

(b) For lease applications involving lands in the National Forest System, the authorized officer shall submit the lease application to the Secretary of Agriculture for consent, for compl tion or consideration of an environmental assessment and for the attachment of appropriate lease stipulations, and for the making of any other findings prerequisite to lease issuance. (43 CFR 3400.3, 3461.1(a))

[44 FR 42615, July 19, 1979, as amended at 47 FR 33141, July 30, 1982]

§ 3425.4 Consultation and sale procedures.

(a)(1) Prior to holding any lease sale in response to any application under this subpart, a public hearing shall be held on the environmental assessment or environmental impact statement, the proposed sale and the fair market value and maximum economic recovery on the proposed lease tract.

(2) Prior to holding any lease sale under this subpart, the Secretary shall consult with the entities and individuals listed in §§ 3420.4-2 through 3420.4-5 of this title.

(b) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under this subpart.

[47 FR 33142, July 30, 1982]

§ 3425.5 Lease terms.

The terms of a lease issued under this subpart shall be consistent with the terms established for all competitive coal leases (43 CFR part 3470).

Subpart 3427—Split Estate Leasing

§ 3427.0-1 Purpose.

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0-5) and the requirements for submission of evidence of written surface owner consent from qualified surface owners of split estate lands.

[47 FR 33142, July 30, 1982]

§ 3427.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M-36909, 86 I.D. 28 (1979).

§ 3427.0-7 Scope.

The surface owner consent provisions of the Surface Mining Control and Reclamation Act do not apply:

(a) To preference right lease applications; and

(b) If the split estate coal is to be mined by underground mining techniques (43 CFR 3500.0-5).

§ 3427.1 Deposits subject to consent.

On split estate lands (43 CFR 3400.0-5(kk)) where the surface is owned by a qualified surface owner, coal deposits that will be mined by other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0-5(gg)) allowing entry and commencement of surface mining operations.

[47 FR 33142, July 30, 1982]

§ 3427.2 Procedures.

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State office (43 CFR subpart 1821). For lands offered for lease sale pursuant to subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the FEDERAL REGISTER. For lands offered for lease sale pursuant to subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

(2) Statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office, but such statement shall be accepted for filing only during activity planning.

(b) Written consent, evidence of written consent, or statement of refusal to consent may be filed by any private person or persons with a potential interest in the lease sale of split estate lands.

(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name, ownership, interest, if any, and legal address of the party making the filing, and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.

(d) The authorized officer shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (d)(2) and (3) of this section:

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies:

(i) The successful bidder shall assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and

(ii) Neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise;

(2) The named surface owner is a qualified surface owner as defined in § 3400.0-5(gg) of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

(e) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, written consent or evidence thereof to enter and commence mining has been granted, and that the filing fully discloses all of the terms of the written consent, or that the refusal to consent is accurate.

(f) The applicable conditions of paragraphs (d) and (e) of this section shall be met prior to the lease sale for lands to which the consents apply.

(g) The authorized officer shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.

(h) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement of the sale for the tract(s). Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR subpart 1821).

(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence, and if the authorized officer is unable to independently determine whether or not the surface owner is qualified, the authorized officer shall presume that the surface owner is unqualified. The authorized officer shall notify the surface owner in writing of this determination and shall provide the surface owner an opportunity to appeal the determination.

(k) Any surface owner determined to be unqualified by decision of the field official of the surface management agency shall have 30 days from the date of receipt of such decision in which he/she may appeal the decision to the appropriate State Director of the Bureau of Land Management. The surface owner shall have the right to appeal the State Director's decision to the Director, Bureau of Land Management, within 30 days of receipt of that decision. Both appeals under this paragraph shall be in writing. As an exception to the provisions of § 3000.4 of this title, the decision of the Director shall be the final administrative action of the Department of the Interior.

[44 FR 42615, July 19, 1979, as amended at 47 FR 33142, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

§ 3427.3 Validation of information.

Any person submitting a written consent shall include with his filing a statement that the evidence submitted, to the best of his knowledge, represents a true, accurate, and complete statement of information regarding the consent for the area described.

§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 3, 1977, shall not be required to meet the transferability of § 3427.2(d)(1) of this title.

[47 FR 33142, July 30, 1982]

§ 3427.5 Unqualified surface owners.

(a) Lease tracts involving surface owners who are not qualified (see § 3400.0-5(gg)) shall be leased subject to the protections afforded the surface owner by the statute(s) under which the surface was patented and the coal reserved to the United States. No consent from an unqualified surface owner is required under this subpart before the authorized officer may issue a lease for such a tract (see section 9 of the Stock-Raising Homestead Act (43 U.S.C. 249); the Act of March 3, 1909 (30 U.S.C. 81); section 3 of the Act of June 22, 1910 (30 U.S.C. 85); and section 5 of the Act of June 21, 1949 (30 U.S.C. 54)).

(b) The provisions of §§ 3427.1 through 3427.4 of this title are inapplicable to any lease tract on which a consent has been given by an unqualified surface owner. The high bidder at the sale of such a tract is not required to submit any evidence of written consent before the authorized officer may issue the lease unless the statute establishing the relative rights of the United States (and its lessees) and the surface owner so requires.

[47 FR 33142, July 30, 1982]

PART 3430—NONCOMPETITIVE LEASES

Subpart 3430—Preference Right Leases

Sec.
3430.0-1 Purpose.
3430.0-3 Authority.
3430.0-7 Scope.
3430.1 Preference right leases.
3430.1-1 Showing required for entitlement to a lease.
3430.1-2 Commercial quantities defined.
3430.2 Application for lease.
3430.2-1 Initial showing.
3430.2-2 Additional time.
3430.3 Planning and environment.
3430.3-1 Land use planning.
3430.3-2 Environmental analysis.
3430.4 Final showing.
3430.4-1 Request for final showing.
3430.4-2 Additional information.
3430.4-3 Costing document and public review.
3430.4-4 Environmental costs.
3430.5 Determination of entitlement to lease.
3430.5-1 Rejection of application.
3430.5-2 Appeals, lack of showing.
3430.5-3 Determination to lease.
3430.5-4 Lease exchange.
3430.6 Lease issuance.
3430.6-1 Lease terms.
3430.6-2 Bonding.
3430.6-3 Duration of leases.
3430.7 Trespass.

Subpart 3431—Negotiated Sales: Rights-of-Way

3431.0-1 Purpose.
3431.0-3 Authority.
3431.1 Qualified purchaser.
3431.2 Terms and conditions of sale.

Subpart 3432—Lease Modifications

3432.0-3 Authority.
3432.1 Application.
3432.2 Availability.
3432.3 Terms and conditions.

Sec.

Subpart 3435—Lease Exchange

3435.0-1 Purpose.
3435.0-3 Authority.
3435.1 Coal lease exchanges.
3435.2 Qualified exchange proponents: Limitations.
3435.3 Exchange procedures.
3435.3-1 Exchange notice.
3435.3-2 Initial response by lessee or lease applicant.
3435.3-3 Agreement to terms.
3435.3-4 Determination of value.
3435.3-5 Notice of public hearing.
3435.3-6 Consultation with Governor.
3435.3-7 Consultation with the Attorney General.
3435.4 Issuance of lease, lease modification or bidding rights.

Subpart 3436—Coal Lease and Coal Land Exchanges: Alluvial Valley Floors

3436.0-1 Purpose.
3436.0-2 Objective.
3436.0-3 Authority.
3436.0-5 Definitions.
3436.1 Coal lease exchanges.
3436.1-1 Qualified lease proponents.
3436.1-2 Federal coal deposits subject to lease by exchange.
3436.2 Fee coal exchanges.
3436.2-1 Qualified exchange proponents.
3436.2-2 Federal coal deposits subject to disposal by exchange.
3436.2-3 Exchange procedures.

AUTHORITY: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

SOURCE: 44 FR 42628, July 19, 1979, unless otherwise noted.

Subpart 3430—Preference Right Leases

§ 3430.0-1 Purpose.

These regulations set forth procedures for processing noncompetitive (preference right) coal lease applications on Federal lands.

§ 3430.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)).

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982]

§ 3430.0-7 Scope.

Section 4 of the Federal Coal Le
ing Amendments Act of 1976, ame
ing 30 U.S.C. 201(b), repealed the S
retary's authority to issue or exten
coal prospecting permit on Fede
lands. Therefore, these regulati
apply only to preference right le
applications based on prospecting p
mits issued prior to August 4, 19
The surface owner consent provisio
of section 714 of the Surface Mini
Control and Reclamation Act of 19
(30 U.S.C. 1304) do not apply to pre
erence right lease applications.

[47 FR 33143, July 30, 1982]

§ 3430.1 Preference right leases.

§ 3430.1-1 Showing required for entitlement to a lease.

An applicant for a preference righ
lease shall be entitled to a noncompetitive coal lease if the applicant ca
demonstrate that he discovered commercial quantities of coal on the prospecting permit lands within the term of the prospecting permit, all other requirements having been met.

§ 3430.1-2 Commercial quantities defined.

For the purpose of § 3430.1-1 of this title, commercial quantities is defined as follows:

(a) The coal deposit discovered under the prospecting permit shall be of such character and quantity that a prudent person would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

(b) The applicant shall present sufficient evidence to show that there is a reasonable expectation that revenues from the sale of the coal shall exceed the cost of developing the mine and extracting, removing, transporting, and marketing the coal. The costs of development shall include the estimated cost of exercising environmental protection measures and suitably reclaiming the lands and complying with all applicable Federal and state laws and regulations.

§ 3430.2 Application for lease.

§ 3430.2-1 Initial showing.

All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of:

(a) Information on the quantity and quality of the coal resources discovered within the boundaries of the prospecting permit area, including an average proximate analysis, sulfur content and BTU content of the coal, and all supporting geological and geophysical data used to develop the required information.

(1) Coal quantity shall be indicated by structural maps of the tops of all beds to be mined, isopachous maps of beds to be mined and interburden; and, for beds to be mined by surface mining methods, isopachous maps of the overburden. These maps shall show the location of test holes and outcrops. An estimate of the measured and indicated reserves for each bed to be mined shall be included.

(2) Coal quality data shall include, at a minimum, an average proximate analysis, sulfur content, and BTU content of the coal in each bed to be mined. Also, all supporting geological and geophysical data used to develop the required information shall be submitted.

(b) Topographic maps as available from state or Federal sources showing physical features, drainage patterns, roads and vehicle trails, utility systems, and water sources. The location of proposed development and mining operations facilities shall be identified on the maps. These maps shall include the approximate locations and extent of tailings and overburden storage areas; location and size of pit areas; and the location of water sources or other resources that may be used in the proposed operation and facilities incidental to that use.

(c) A narrative statement that includes:

(1) The anticipated scope of operations, the schedule of operations, and the types of equipment to be used;

(2) The mining method to be used and an estimate of the expected mining sequence and production rate; and

(3) The relationship, if any, between operations planned on the land applied for and existing or planned operations and facilities on adjacent lands.

(d) The authorized officer may request from the applicant, or the applicant may submit, any other information necessary to conduct an environmental analysis of the proposed mining operation, formulate mitigating measures and lease terms and determine commercial quantities.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982]

§ 3430.2-2 Additional time.

(a) If the applicant has timely submitted some, but not all, of the information required by § 3430.2-1 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested information within 60 days of the date of the request. The authorized officer may grant one 60-day extension if the applicant files a written request for an extension within the first 60-day period.

[44 FR 42628, July 19, 1979. Redesignated and amended at 47 FR 33143, July 30, 1982]

§ 3430.3 Planning and environment.

§ 3430.3-1 Land use planning.

(a) As a matter of policy, the Department shall complete the processing of all preference right lease applications.

(b) Preference right lease applications shall be processed in the cycle of on-going comprehensive land use plans unless the authorized officer determines that the processing of the application, in the cycle of on-going comprehensive land use plans, will not be completed by December 1, 1984.

(c) (1) Each applicant may file a request with the authorized officer:

(i) For an estimate of when the application shall be processed in the cycle of on-going comprehensive land use plans; and

(ii) To have the applicant's application processed in advance of the period specified in the authorized officer's estimate.

(2) The request shall include a statement of how the applicant will benefit from having the application processed more quickly than otherwise scheduled, and shall specify how the pendency of the application affects the applicant's production, marketing or use of coal before 1986.

(3) If the authorized officer concludes that the failure to process an application apart from the cycle of on-going comprehensive land use plans would cause the applicant substantial hardship, the authorized officer may process the application apart from the cycle of on-going comprehensive land use plans in a land use analysis.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25798, July 8, 1987]

§ 3430.3-2 Environmental analysis.

(a) After the applicant has completed the initial showing required under § 3430.2 of this title, the authorized officer shall conduct an environmental analysis of the proposed preference right lease area and prepare an environmental assessment or environmental impact statement on the application.

(b) The environmental analysis may be conducted in conjunction with and included as part of the environmental impact statement required for coal activity planning under § 3420.3-4 of this title.

(c) Except for the coal preference right lease applications analyzed in the *San Juan Regional Coal Environmental Impact Statement* (March 1984), the *Savery Coal EIS* (July 1983), and the *Final Decision Record and Environmental Assessment of Coal PRLAs* (*Beans Spring, Table, and Black Butte Creek Projects*) (September 1982), or covered by serial numbers C-0127832, C-0123475, C-0126669, C-8424, C-8425, W-234111, C-0127834, U-1362, NM-3099, F-014996, F-029746, and F-033619, the authorized officer shall prepare environmental impact statements for all preference right lease applications for coal for which he/she proposes to issue a lease, in accordance with the following procedures:

(1) The authorized officer shall prepare adequate environmental impact statements and other National Environmental Policy Act documentation prior to the determination that commercial quantities of coal have been discovered on the lands subject to a preference right lease application, in order to assure, *inter alia*, that the full cost of environmental impact mitigation, including site-specific lease stipulations, is included in the commercial quantities determination for that preference right lease application.

(2) The authorized officer shall prepare and evaluate alternatives that will explore various means to eliminate or mitigate the adverse impacts of the proposed action. The impact analysis shall address each numbered subject area set forth in § 3430.4-4 of this title, except that the impact analysis need not specifically address the subject areas of Mine Planning or of Bonding. At a minimum, each environmental impact statement shall include:

(i) A "no action" alternative that examines the impacts of the projected development without the issuance of leases for the preference right lease applications;

(ii) An alternative setting forth the applicant's proposed action. This alternative shall examine the applicant's proposal, based on information submitted in the applicant's initial showing and standard lease stipulations;

(iii) An alternative setting forth the authorized officer's own proposed action. This alternative shall examine:

(A) The impacts of mining on those areas encompassed by the applicant's proposal that are found suitable for further consideration for mining after the unsuitability review provided for by subpart 3461 of this title; and

(B) The impacts of mining subject to appropriate special stipulations designed to mitigate or eliminate impacts for which standard lease stipulations may be inadequate. With respect to mitigation of significant adverse impacts, alternative lease stipulations shall be developed and preferred lease stipulations shall be identified and justified. The authorized officer shall state a preference between standard lease stipulations and special stipulations (performance standards or design criteria).

(iv) An exchange alternative, examining any reasonable alternative for exchange that the Secretary would consider were the applicant to show commercial quantities, and, in cases where, if the lands were to be leased, there is a finding that the development of the coal resources is not in the public interest.

(v) An alternative exploring the options of withdrawal and just compensation and examining the possibility of Secretarial withdrawal of lands covered by a preference right lease application (assuming commercial quantities will be shown) while the Secretary seeks congressional authorization for purchase or condemnation of the applicant's property, lease or other rights.

(3) The authorized officer shall prepare a cumulative impact analysis in accordance with 40 CFR 1508.7 and 1508.25 that examines the impacts of the proposed action and the alternatives when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or nonfederal) or person undertakes such other actions.

(i) The cumulative impact analysis shall include an analysis of the combined impacts of the proposed preference right leasing with the mining of currently leased coal and other reasonably foreseeable future coal development, as well as other preference right leasing in the area under examination.

(ii) The cumulative impact analysis shall also examine the impacts of the proposed preference right leasing in conjunction with impacts from noncoal activities, such as mining for other minerals, other projects requiring substantial quantities of water, and other sources of air pollution.

(4) When information is inadequate to estimate impacts reasonably, the authorized officer shall comply with the provisions of 40 CFR 1502.22(b).

(5) Each environmental impact statement shall be prepared in accordance with the Council of Environmental Quality's National Environmental Policy Act regulations, 40 CFR part 1500.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25798, July 8, 1987]

§ 3430.4 Final showing.

§ 3430.4-1 Request for final showing.

(a) Upon completion of the environmental assessment or impact statement on the application, the authorized officer shall, if not previously submitted, request a final showing by the applicant.

(b) The authorized officer shall transmit to the applicant, separately or with a request for a final showing, the following:

(1) The proposed lease form, including any proposed stipulations; and

(2) A copy of the environmental assessment or impact statement on the application including a map or maps showing all areas subject to specific conditions or protective stipulations because they have been assessed or designated to be unsuitable for all or certain stipulated methods of coal mining, or because of other identified values that are not embodied in the unsuitability criteria in subpart 3461 of this title.

(c) The authorized officer shall process all preference right lease applications, except for those preference right lease applications numbered F-029746 and F-033619, in accordance with the following standards and procedures:

(1) The authorized officer shall transmit a request for final showing to each applicant for each preference right lease application for which it proposes to issue a lease.

(2) Copies of each request shall be sent to all interested parties.

(3) The request shall contain proposed lease terms and special stipulations;

(d) Within 90 days of receiving the proposed lease form, the applicant shall submit the following information:

(1) Estimated revenues;

(2) The proposed means of meeting the proposed lease terms and special conditions and the estimated costs that a prudent person would consider before deciding to operate the proposed mine, including but not limited

to, the cost of developing the mine, removing the coal, processing the coal to make it salable, transporting the coal, paying applicable royalties and taxes, and complying with applicable laws and regulations, the proposed lease terms, and special stipulations; and

(3) If the applicant intends to mine the deposit in the lands covered by a preference right lease application as part of a logical mining unit, the applicant shall include the estimated costs and revenue of the combined mining venture.

(e) The applicant may withdraw any lands from the application and delete them from the final showing if the applicant is no longer interested in leasing such lands or if such lands would be subject to special conditions or protective stipulations and the cost of mining the lands subject to these conditions or protective stipulations would adversely affect the commercial quantities determination.

(f) The applicant may delete any area subject to special conditions or protective stipulations, because it has been assessed to be unsuitable or otherwise, and the costs of mining subject to the conditions or protective stipulations, from the final showing required by paragraph (c) of this section.

(g) All data submitted by the preference right lease applicant that is labeled as privileged or confidential shall be treated in accordance with the provisions of part 2 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25799, July 8, 1987]

§ 3430.4-2 Additional information.

(a) If the applicant for a preference right lease has submitted timely, some, but not all of the information required in § 3430.4-1 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested additional information within 60 days of the receipt of the request. The authorized officer may grant one 60-day extension if the applicant files a written request within the first 60-day period.

§ 3430.4-3 Costing document and public review.

(a) The authorized officer shall prepare a document that estimates the cost of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environment and mitigate the adverse environmental impacts of mining.

(1) The costs shall be calculated for each of the various numbered subject areas contained in § 3430.4-4 of this title.

(2) The authorized officer's estimated costs of compliance may be stated in ranges based on the best available information. If a range is used, he/she shall identify the number from each range that the authorized officer proposes to use in making the determination whether a particular applicant has identified coal in commercial quantities.

(b) The authorized officer shall provide for public review of the costs of environmental protection associated with the proposed mining on the preference right lease application area.

(1) The authorized officer shall send the Bureau's cost estimate document to the preference right lease applicant and provide at least 30 days for the applicant to review said document before a notice of availability is published in the FEDERAL REGISTER. Comments submitted by the applicant, and the Bureau's response to the comments, shall be made available to the public for review and comment at the time the cost estimate document is made available.

(2) The authorized officer then shall publish in the FEDERAL REGISTER a notice of the availability of the Bureau's cost estimation document.

(3) The authorized officer also shall send the cost estimation document to all interested parties, including all agencies, organizations, and individuals that participated in the environmental impact statement or the scoping process.

(4) Copies of the cost estimation document shall be submitted to the Environmental Protection Agency.

(5) The public shall be given a period of not less than 60 days from the date of the publication of the

notice in the FEDERAL REGISTER to comment on the Bureau's cost estimates.

(c) The cost estimate document and all substantive comments received (or summaries thereof if the response is voluminous) shall be part of the Record of Decision for the preference right lease application(s) (See 40 CFR 1505.2).

(1) The authorized officer shall respond to each substantive comment in the Record of Decision by modifying or supplementing his/her cost estimates, or explaining why they were not modified or supplemented in response to the comments.

(2) The authorized officer shall submit a copy of the Record of Decision with the public comments and the Bureau's response to the Environmental Protection Agency.

(3) The authorized officer shall publish a notice of the availability of each Record of Decision in the FEDERAL REGISTER.

(4) No preference right lease shall be issued sooner than 30 days following publication of the notice of availability required by paragraph (c)(3) of this section.

[52 FR 25799, July 8, 1987]

§ 3430.4–4 Environmental costs.

Prior to determining that a preference right lease applicant has discovered coal in commercial quantities, the authorized officer shall include the following listed and any other relevent environmental costs in the adjudication of commercial quantities (examples may not apply in all cases, neither are they all inclusive):

(a) Permitting. (1) Surface water—cost of collecting and analyzing baseline data on surface water quality and quantity (collecting and analyzing samples, constructing and maintaining monitoring facilities, purchasing equipment needed for surface water monitoring).

(2) Groundwater—costs of collecting and analyzing baseline data on groundwater quality and quantity (collecting and evaluating samples from domestic or test wells, purchasing well casings and screens and monitoring equipment, drilling and maintenance of test wells).

(3) Air quality—costs of collecting and analyzing baseline air quality data (purchasing rain, air direction, and wind guages and air samplers and evaporation pans).

(4) Vegetation—costs of collecting and analyzing data on indigenous vegetation (collecting and classifying samples for productivity analyses).

(5) Wildlife—costs of collecting and analyzing baseline data on wildlife species and habitats (collecting wildlife and specimens and data and purchasing traps and nets).

(6) Soils—costs of collecting and analyzing baseline soil data (collecting and analyzing soil samples by physical and chemical means).

(7) Noise—costs of collecting and analyzing baseline data on noise (purchasing necessary equipment).

(8) Socio-economics—costs of conducting social and economic studies for baseline data (collecting and evaluating social and economic data).

(9) Archaeology, history, and other cultural resources—costs of collecting and analyzing data on archaeology, history, and other cultural resources (conducting archaelogical excavations and historical and cultural surveys).

(10) Paleontology—costs of collecting and analyzing paleontological data (conducting surveys and excavations).

(11) Geology—costs of collecting and analyzing baseline geological data (drilling overburden cores and conducting physical and chemical analyses).

(12) Subsidence—costs of collecting and analyzing data on subsidence (setting monuments to measure subsidence).

(13) Mine planning—costs of developing mine permit application package (development of operating, blasting, air and water pollution control, fish and wildlife, and reclamation plans).

(b) Mining—environmental mitigation required by law or proposed to be imposed by the authorized officer.

(1) Surface water protection—costs of mitigating the impacts of mining on the quantity of surface water (purchasing relacement water and transporting it) and on the quality of surface water (construction sedimentation ponds, neutralization facilities, and diversion ditches).

(2) Groundwater protection—costs of mitigating the impacts of mining on the quantity of groundwater (replacing diminished supplies or water rendered unfit for its prior use(s)) and on the quality of groundwater (treating pumped mine water, compensating for damage to water rights, sealing sedimentation ponds).

(3) Air pollution control—costs of mitigating the impacts of mining on air quality (compliance with National Ambient Air Quality Standard and Protection from Significant Deterioration requirements using water and chemical sprays for dust control, installing and operating dust and other pollution collections).

(4) Noise abatement—costs of mitigating the impacts of mining on noise levels in mining area (installing and maintaining noise mufflers on equipment and around the mine site).

(5) Wildlife—costs of mitigating impacts to wildlife species identified as reasonably likely to occur and subject to proposed lease stipulations, and including costs of compliance with the Endangered Species Act and other laws, regulations, and treaties concerning wildlife protection.

(6) Socio-economics—costs of implementing any mitigation measure the Bureau or any other government agency has imposed; and of mitigating impacts on surface owners and occupants, including relocation costs and costs of compensation for improvements, crops, or grazing values.

(7) Archaeology, history, and other cultural—costs of monitoring and inspection during mining to identify archaeological, historical, and other cultural resources, and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(8) Paleontological—costs of monitoring and inspection during mining to identify paleontological resources and costs of mitigating impacts to these resources identified as reasonably likely to occur and subject to proposed lease stipulations.

(9) Subsidence—costs of mitigating the impacts of subsidence identified as reasonably likely to occur and subject to proposed lease stipulations.

(10) Monitoring—costs of purcha and maintaining facilities, equipm and personnel to accomplish moni ing required as a permit conditio lease stipulation, or by law or reg tion.

(c) Reclamation. (1) Topsoil rem and replacement—costs of reclaim soil by stockpiling or continuous m ods (removing and stockpiling and placing topsoil, protecting the sto pile, if necessary, from erosion compacting).

(2) Subsoil removal and repla ment—costs of reclaiming subsoil stockpiling or continuous method moving and stockpiling and replac subsoil, protecting the stockpile, necessary, from erosion and compa ing).

(3) Site restoration—costs of rem ing structures necessary to mining erations but not part of original la features (sedimentation ponds, roa and buildings).

(4) Grading—costs of grading banks to their approximate origi contour before replacing topsoil a subsoil, if applicable, and revegetati the affected area.

(5) Revegetation—costs of restori vegetative cover to the affected a after grading and replacement of to soil and subsoil, if applicable (limin planting, irrigating, fertilizing, cul vating, and reworking, if first effor are unsuccessful).

(6) Bonds—costs of bonds require by Federal, State and local gover ments.

[52 FR 25799, July 8, 1987]

§ 3430.5 Determination of entitlement lease.

§ 3430.5-1 Rejection of application.

(a) The authorized officer sha reject the application if:

(1) The applicant fails to show tha coal exists in commercial quantities o the applied for lands; or

(2) The applicant does not respon to a request for additional informatio within the time period specified § 3430.3-2 or § 3430.4-2 of this title; o

(3) The applicant otherwise failed meet statutory or regulatory requir ments; or

(4) The applicant does not permit declassification of proprietary information within the time period specified in § 3430.2-2(b) of this title.

(b)(1) The authorized officer shall reject those portions of an otherwise acceptable application which were not available for prospecting when the underlying prospecting permit was issued because the lands were claimed, developed or withdrawn from coal leasing.

(2) In any action under this subsection, the authorized officer shall reject all lands in each affected smallest legal subdivision or, if practicable, each affected 10 acre aliquot part of the subdivision.

(c) The authorized officer may reject any preference right lease application that clearly cannot satisfy the commercial quantities test without preparing additional National Environmental Policy Act documentation and/or a cost estimate document as described in §§ 3430.3-2, 3430.4-3 and 3430.4-4 of this title. The following procedures apply to rejecting these preference right lease applications:

(1) When an applicant clearly fails to meet the commercial quantities test as provided in this part, the authorized officer may notify the applicant:

(i) That its preference right lease application will be rejected;

(ii) Of the reasons for the proposed rejection;

(iii) That the applicant has 60 days in which to provide additional information as to why its preference right lease application should not be rejected; and

(iv) Of the type, quantity, and quality of additional information needed for reconsideration.

(2) If, after the expiration of the 60-day period, the authorized officer has no basis on which to change his/her decision, the authorized officer shall reject the preference right lease application.

(3) If the authorized officer reconsiders and changes the decision to reject the preference right lease application, he/she shall continue to adjudicate the preference right lease application in accordance with §§ 3430.3-2, 3430.4-3, and 3430.4-4 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25800, July 8, 1987]

§ 3430.5–2 Appeals, lack of showing.

(a) If the application is rejected because the existence of commercial quantities of coal has not been shown, the applicant may, in accordance with the procedures in part 4 of this title, file a notice of appeal and a statement of the reasons for the appeal.

(b) The applicant shall have the right to a hearing before an Administrative Law Judge if the applicant alleges that the facts in the application are sufficient to show entitlement to a lease.

(c) In such a hearing, the applicant shall bear both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that commercial quantities of coal exist in the proposed lease area.

§ 3430.5–3 Determination to lease.

A preference right lease shall be issued if, upon review of the application, any available land use plan and the environmental assessment or environmental impact statement, the authorized officer determines that:

(a) Coal has been discovered in commercial quantities on the lands applied for;

(b) The applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(c) The conditions or protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated.

[47 FR 33143, July 30, 1982]

§ 3430.5–4 Lease exchange.

(a) Upon the the request of the applicant, the Secretary may initiate lease exchange procedures under subpart 3435 of this title if the lands under application have been shown to contain coal in commercial quantities.

(b) Upon the request of the authorized officer, or at the request of the regional coal team or the Governor of the affected State(s), the Secretary may initiate lease exchange procedures under subpart 3435 of this title if:

(1) The lands under application have been shown to contain commercial quantities of coal;

(2) All or a portion of the proposed lease has been assessed as lands which should be unavailable for coal development because of land use or resource conflicts or as lands which are unsuitable for coal mining under the provisions of subpart 3461 of this title; and

(3) The lands are exempted from the application of any relevant unsuitability criteria or the Secretary lacks the authority to prevent damage to or loss of the land use or resource values threatened by lease operations.

[47 FR 33143, July 30, 1982, as amended at 48 FR 37656, Aug. 19, 1983]

§ 3430.6 Lease issuance.

§ 3430.6-1 Lease terms.

Each preference right lease shall be subject to the terms provided for Federal coal leases established in part 3470 of this title.

[47 FR 33144, July 30, 1982]

§ 3430.6-2 Bonding.

The lease bond for a preference right lease shall be set in accordance with subpart 3474 of this title.

§ 3430.6-3 Duration of leases.

Preference right leases shall be issued for a term of 20 years and for so long thereafter as coal is produced in commercial quantities as defined in § 3483.1 of this title. Each lease shall be subject to readjustment at the end of the first 20-year period and at the end of each period of 10 years thereafter in accordance with subpart 3451 of this title.

[44 FR 42628, July 19, 1979. Redesignated and amended at 47 FR 33144, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

§ 3430.7 Trespass.

Mining operations conducted prior to the effective date of a lease shall constitute an act of trespass and be subject to penalties specified by § 9239.5 of this title.

Subpart 3431—Negotiated Sales: Rights-of-Way

§ 3431.0-1 Purpose.

The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*).

§ 3431.0-3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(a)(1) of the Mineral Leasing Act of 1920, as amended by section 2 of the Act of October 31, 1978 (30 U.S.C. 201(a)(1)).

§ 3431.1 Qualified purchaser.

Any person who has acquired or applied for a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 which requires the removal of coal deposits as a necessary incident to development, construction or use of the right-of-way is qualified to purchase the coal to be removed.

§ 3431.2 Terms and conditions of sale.

(a) Coal to be removed in connection with a right-of-way shall be sold to the qualified purchaser only at the estimated fair market value, as determined by the Secretary.

(b) Where the right-of-way is being used in connection with the development of a lease, the removal of coal from the right-of-way shall be subject to the same requirements for health and safety protection, surface protection and rehabilitation that apply to the lease involved, and provisions for adequate recovery and conservation of the coal deposit.

(c) Where the right-of-way is not being used in the develoment of a Federal coal lease, the removal of the coal shall be made subject to the Surface Mining Control and Reclamation Act of 1977, and subject to such terms and conditions as the authorized officer of the surface management agency determines are necessary: (1) To protect public health, safety, and the environment; and (2) to ensure adequate recovery and conservation of the coal deposits in the right-of-way.

(d) All terms and conditions of the sale shall be terms and conditions of the right-of-way and shall be administered under the provisions of Group 2800 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

Subpart 3432—Lease Modifications

§ 3432.0–3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0–3 of this title.

(b) These regulations primarily implement section 3 of the Mineral Leasing Act of 1920, as amended by section 13 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 203).

§ 3432.1 Application.

(a) A lessee may apply for a modification of a lease to include coal lands or coal deposits contiguous to those embraced in a lease. In no event shall the acreage in the application, when combined with the total area added by all modifications made after August 4, 1976, exceed 160 acres or the number of acres in the original lease, whichever is less.

(b) The lessee shall file the application for modification in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR subpart 1821), describing the additional lands desired, the lessee's needs or reasons for such modification, and the reasons why the modification would be to the advantage of the United States.

[44 FR 42628, July 19, 1979, as amended at 44 FR 56340, Oct. 1, 1979]

§ 3432.2 Availability.

(a) The authorized officer may modify the lease to include all or part of the lands applied for if he determines that: (1) The modification serves the interests of the United States; (2) there is no competitive interest in the lands or deposits; and (3) the additional lands or deposits cannot be developed as part of another potential or existing independent operation.

(b) Coal deposits underlying land the surface of which is held by a qualified surface owner, and which would be mined by other than underground mining techniques, may not be added to a lease by modification.

(c) The lands applied for shall be added to the existing lease without competitive bidding, but the United States shall receive the fair market value of the lease of the added lands, either by cash payment or adjustment of the royalty applicable to the lands added to the lease by the modification.

§ 3432.3 Terms and conditions.

(a) The terms and conditions of the original lease shall be made consistent with the laws, regulations, and lease terms applicable at the time of modification except that if the original lease was issued prior to August 4, 1976, the minimum royalty provisions of section 6 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 207; 43 CFR 3473.3–2) shall not apply to any lands covered by the lease prior to its modification until the lease is readjusted.

(b) Before a lease is modified, the lessee shall file a written acceptance of the conditions imposed in the modified lease and a written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

(c) A lease modification shall not be made until the authorized officer has complied with the procedures and standards set out in § 3425.3 of this title.

Subpart 3435—Lease Exchange

§ 3435.0–1 Purpose.

The objective of these regulations is to provide methods for exchange of coal resources when it would be in the public interest to shift the impact of mineral operations from leased lands or portions of leased lands to currently unleased lands to preserve public resource or social values, and to carry out Congressional directives authorizing coal lease exchanges.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

§ 3435.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) Section 3 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 203);

(2) Section 510(b)(5) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1260(b)(5));

(3) Section 1 of the Act of October 30, 1978 (92 Stat. 2073);

(4) Section 1 of the Act of October 19, 1980 (94 Stat. 2269); and

(5) Section 4 of the Rattlesnake National Recreation Area and Wilderness Act of 1980 (94 Stat. 2272).

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

§ 3435.1 Coal lease exchanges.

Where the Secretary determines that coal exploration, development and mining operations would not be in the public interest on an existing lease or preference right lease application or portions thereof, or where the Congress has authorized lease exchange for a class or list of leases, an existing lease or preference right lease application may be relinquished in exchange for:

(a) Leases where the Congress has specifically authorized the issuance of a new coal lease;

(b) The issuance of coal lease bidding rights of equal value;

(c) A lease for a mineral listed in subpart 3526 of this title by mutual agreement between the applicant and the Secretary; and

(d) Federal coal lease modifications; or

(e) Any combination of the above.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

§ 3435.2 Qualified exchange proponents: Limitations.

(a) Any person who holds a Federal coal lease, or a preference right lease application that has been found to meet the commercial quantities requirements of §§ 3430.1 and 3430.5 of this title on lands described in § 3435.1 of this title is qualified to ask the Secretary to initiate an exchange.

(b) Except for leases qualified under subpart 3436 of this title, the Secretary may issue a new coal lease in exchange for the relinquishment of outstanding leases or lease applications only in those cases where the Congress has specifically authorized such exchanges.

(c) The Secretary shall evaluate each qualified exchange request and determine whether an exchange is in the public interest.

(d) Any modification of a coal lease in an exchange under this subpart shall be subject to the limitations in §§ 3432.1(a), 3432.2(b) and 3432.3(a) of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

§ 3435.3 Exchange procedures.

§ 3435.3-1 Exchange notice.

(a) The Secretary shall initiate exchange procedures by notifying in writing a Federal coal lessee or preference right lease applicant that consideration of an exchange of mineral leases or other coal lease interests is appropriate. The notification may be on the Secretary's initiative or in response to a request under § 3435.2 of this title.

(b) The exchange notice shall also be provided to the Governor of the affected State(s) concurrent with notice to the lessee or preference right lease applicant stating why the Secretary believes an exchange may be in the public interest.

(c) The exchange notice shall contain a description of the leased lands or lands under preference right lease application being considered for exchange. These lands may include all or part of an existing lease or preference right lease application.

(d) The exchange notice may contain a description of the lands for which the Secretary would grant an exchange lease or lease interest. If a coal lease modification would be granted by exchange, the lands shall be selected from those lands found acceptable for further consideration for coal leasing under § 3420.1 of this title; and

(e) The notice shall contain a request that the lessee or preference right lease applicant indicate whether he is willing to negotiate an exchange.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

§ 3435.3–2 Initial response by lessee or lease applicant.

(a) The lessee or preference right lease applicant wishing to negotiate an exchange shall so reply in writing. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or coal lease modification.

(b) A reply to the exchange notice by a lessee or preference right lease applicant indicating willingness to enter into an exchange shall also indicate willingness to provide the geologic and economic data needed by the Secretary to determine the fair market value of the lease or lease application to be relinquished. The lessee or preference right lease applicant shall also indicate willingness to provide any geologic and economic data in his possession that will help the Secretary to determine the fair market value of the potential Federal lease exchange tract or tracts.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

§ 3435.3–3 Agreement to terms.

(a) If both parties wish to proceed with the exchange, the authorized officer and the lessee or preference right lease applicant shall negotiate an exchange consistent with § 3435.1 of this title. The authorized officer shall consult with the regional coal team prior to initiation of such negotiations and shall consult again prior to finalization of the negotiated exchange.

(b) Land proposed for lease in exchange for, or for inclusion in, an existing lease or preference right lease application shall be subject to leasing under Group 3400 or 3500 of this title as appropriate, and any coal lands shall have been found to be acceptable for further consideration for leasing under § 3420.1 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

§ 3435.3–4 Determination of value.

The value of the land to be leased, or added by lease modification, or of the bidding rights to be issued in exchange shall, to the satisfaction of the lessee or lease applicant and the Secretary, be equal to the estimated fair market value of the lease or lease application to be relinquished.

§ 3435.3–5 Notice of public hearing.

After the lessee or lease applicant and the Secretary agree on an exchange proposal, notice of the exchange proposal shall be published in the FEDERAL REGISTER and in at least 1 newspaper of general circulation in each county or equivalent political subdivision where both the offered and selected lands are located. The notice shall announce that, upon request, at least 1 public hearing shall be held in a city or cities located near each tract involved. The notice shall also contain the Secretary's preliminary findings why the proposed exchange is in the public interest. Any notice of the availability of a draft environmental assessment or environmental impact statement on the exchange may be used to comply with this section.

[47 FR 33144, July 30, 1982]

§ 3435.3–6 Consultation with Governor.

(a) The Secretary shall notify the Governor of each state in which lands in the proposed exchange are located of the terms of the exchange and the Secretary's preliminary findings why the exchange is in the public interest. The Secretary shall give each Governor 45 days to comment on the proposal prior to consummating the exchange.

(b) If, within the 45 day period, the Governor(s), in writing, objects to an exchange that involves leases or lease rights in more than one state, the Secretary will not consummate the exchange for 6 months from the date of objection. The Governor(s) may during this 6-month period submit a written statement why the exchange should not be consummated, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33144, July 30, 1982]

§ 3435.3-7 Consultation with the Attorney General.

In any exchange which, if consummated, shall result in the issuance of a Federal coal lease, the Secretary, after issuing an exchange notice under § 3435.3-1 of this title and before issuance of a written decision under § 3435.4 of this title.

(a) Shall require the lessee or lease applicant to submit the information in § 3422.3-4 of this title; and

(b) If the Attorney General, within 30 days, objects to lease issuance, shall not issue the exchange lease except after complying with the provisions of § 3422.3-4(f)(2) of this title.

§ 3435.4 Issuance of lease, lease modification or bidding rights.

(a) If, after any public hearing(s), the Secretary by written decision concludes that an exchange is in the public interest, the Secretary shall transmit to the lessee or preference right lease applicant:

(1) A statement of the Secretary's findings that lease issuance is in the public interest;

(2) Either (i) copies of the coal or other mineral exchange lease or coal lease modification containing the terms, conditions and special stipulations under which the lease or coal lease modification is to be granted, or (ii) a statement describing the terms and conditions of the coal lease bidding rights to be granted in exchange; and

(3) A statement for execution by the lessee or preference right lease applicant relinquishing all right or interest in the lease or preference right lease application, or portion thereof, to be exchanged.

(b) The exchange lease, lease modification or coal lease bidding rights shall be issued upon relinquishment of the lease, preference right lease application, or portion thereof.

(c) The exchange lease or lease modification shall be subject to all relevant provisions of Group 3400 or 3500 of this title and 30 CFR Chapter VII, Subchapter D as appropriate.

[47 FR 33144, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

Subpart 3436—Coal Lease and Coal Land Exchanges: Alluvial Valley Floors

SOURCE: 47 FR 33145, July 30, 1982, unless otherwise noted.

§ 3436.0-1 Purpose.

The purpose of this subpart is to establish criteria and procedures for the exchange of coal leases and for the exchange of fee held coal for unleased federally-owned coal in cases where surface coal mining operations on the lands that are covered by an existing coal lease or that are fee held would interrupt, discontinue or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity or quality of water in surface or underground systems that supply those alluvial valley floors.

§ 3436.0-2 Objective.

(a) The objective of this subpart is to provide relief to persons holding leases for Federal coal deposits or fee title to coal deposits which underlie or are near alluvial valley floors and which cannot be mined through surface mining operations under section 510(b)(5) of the Surface Mining Control and Reclamation Act, through the exchange of lands, or interests therein, pursuant to the authority granted by the statutory provision.

(b) The Secretary shall exercise the authority to dispose of Federal coal deposits by lease to meet this objective when he/she determines that the exchange would serve the public interest. In determining whether such an exchange will serve the public interest, the Secretary will consider a wide variety of factors, including better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. Unless consideration of the above factors would show otherwise, it will be assumed that an exchange will serve the public interest if substantial financial and legal commitments have been made toward development of the offered coal resource.

§ 3436.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)).

§ 3436.0-5 Definitions.

As used in this subpart, the term *substantial financial and legal commitments* is a relative one, and the determination whether such commitments have been made, so as to qualify a person for an exchange under this subpart, will be made on a case-by-case basis. In making this determination, the Secretary will consider the level of expenditures made prior to January 1, 1977, that are related to development of the coal resource which is offered in exchange, taken together with the damages for which the person would be liable as a result of any legal commitments made prior to January 1, 1977, in connection with development of said coal resource, and the Secretary will compare that level of expenditure to the estimated total cost of developing the coal resource to the point of establishing a producing surface coal mining operation.

§ 3436.1 Coal lease exchanges.

§ 3436.1-1 Qualified lease proponents.

(a) Coal lease exchanges under this program shall be available only to persons who:

(1) Hold a Federal coal lease or preference right lease application covering lands that include or are near an alluvial valley floor located west of the 100th Meridian, west longitude, where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the water in surface or underground water systems that would supply the alluvial valley floor;

(2) Have made substantial financial and legal commitments prior to January 1, 1977, in connection with the lease or preference right lease application; and

(3) Are not entitled to continue any existing surface coal mining operations pursuant to the first proviso of section 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Persons seeking an exchange bear the burden of establishing that they are qualified pursuant to paragraph (a) of this section. The Secretary shall accept a determination made pursuant to 30 CFR 785.19(c) as conclusive evidence of the existence of an alluvial valley floor.

§ 3436.1-2 Federal coal deposits subject to lease by exchange.

The lease offered by the Secretary in exchange for existing coal leases shall be for Federal coal deposits determined to be acceptable for further consideration for coal leasing pursuant to § 3420.1-5 or § 3420.2-3 of this title.

(a) Any person meeting the requirements of § 3436.1-1(a) of this title may apply for a lease exchange. No special form of application is required.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified and whether the exchange serves the public interest. The exchange shall be processed in accordance with the procedures in subpart 3435 of this title for other lease and lease interest exchanges.

(c) After the Secretary and the exchange proponent have agreed to terms pursuant to § 3435.3-3 of this title, the Secretary may elect to consider the exchange proposal in conjunction with the activity planning process for the coal production region in which the lands proposed to be leased are located pursuant to § 3420.3 of this title. If the Secretary elects to process the exchange proposal in this manner, the tracts identified for use in the lease exchange shall be:

(1) Delineated for analysis pursuant to § 3420.3-3 of this title;

(2) Ranked as having high desirability pursuant to § 3420.3-4(a) of this title; and

(3) Selected for inclusion for analysis purposes in alternative proposed lease sale schedules pursuant to § 3420.3-4(c) of this title. Such tracts shall then be the subject of environmental analysis, public comment and consultation pursuant to §§ 3420.3 and 3420.4 of this title.

(d) If the Secretary elects to process the exchange proposal independently of the activity planning process, the Secretary shall consider the environmental and resource information acquired during the land use planning process and found in the most recent regional environmental impact statement completed under the Federal coal management program. An environmental assessment or environmental impact statement shall be prepared on the proposed exchange prior to the public hearings and consultation required by §§ 3435.3-5 through 3435.3-7 of this title.

(e) In determining under § 3435.3-4 of this title the estimated value of the lease or preference right lease application to be relinquished, the Secretary shall proceed as though there were no prohibitions on surface mining operations on the lands covered by the lease or preference right lease application.

(f) The exchange proponent shall bear all administrative costs of the exchange, including the cost of establishing the value of each lease involved in the exchange, if the exchange is completed.

[47 FR 33145, July 30, 1982, as amended at 50 FR 42023, Oct. 17, 1985]

§ 3436.2 Fee coal exchanges.

§ 3436.2-1 Qualified exchange proponents.

(a) Fee coal exchanges under this program shall only be available to persons who:

(1) Own coal west of the 100th Meridan, west longitude, underlying or near an alluvial valley floor where surface coal mining operations are prohibited by section 510(b)(5) of the Surface Mining Control and Reclamation Act because such operations would interrupt farming or materially damage the quantity and quality of the wat in surface or underground water sy tems that would supply the alluvi valley floor; and

(2) Are not entitled to continue an existing surface coal mining operatio pursuant to the first proviso to sectio 510(b)(5) of the Surface Mining Control and Reclamation Act.

(b) Exchange proponents bear th burden of establishing their qualific tions pursuant to paragraph (a) of th section. The Secretary shall accept determination made pursuant to 3 CFR 785.19(c) as conclusive evidenc of the existence of an alluvial valle floor.

§ 3436.2-2 Federal coal deposits subject disposal by exchange.

The coal deposits offered in exchange by the Secretary shall be determined to be acceptable for furthe consideration for coal leasing pursuan to § 3420.1 of this title and shall be i the same State as the coal deposit offered in exchange by the proponent.

§ 3436.2-3 Exchange procedures.

(a) Any person meeting the requirements of § 3436.2-1(a) of this title ma apply for an exchange. No specia form of application is required. Any exchange proposal should be directe to the District Manager for the Bureau of Land Management distric in which the Federal coal deposits are located.

(b) The Secretary shall evaluate each exchange request to determine whether the proponent is qualified.

(c) After the authorized officer and the owner of the coal deposit underlying an alluvial valley floor identify Federal coal deposits that are suitable for consideration for disposition through exchange, the exchange shall be processed in accordance with part 2200 of this title, except as provided in this section.

(d) The Secretary may consolidate the environmental analysis for the proposed exchange with the regional environmental impact statement prepared on alternative leasing schedules for the coal production region in which the Federal coal deposits are located pursuant to § 3420.3-4 of this title. If the environmental analysis is not so consolidated, the Secretary shall consider environmental and other resource information obtained during the land use planning process or at other stages of the coal management program in preparing an appropriate environmental analysis or environmental impact statement on the proposed exchange.

(e) Exchanges shall be made on an equal value basis, provided that values of the lands exchanged may be equalized by the payment of money to the grantor or the Secretary so long as the payment does not exceed 25 percent of the total value of the lands or interests transferred out of Federal ownership. In determining the value of the coal deposit underlying or near an alluvial valley floor, the Secretary shall proceed as though there were no prohibition on surface coal mining operations on the property.

[47 FR 33145, July 30, 1982, as amended at 50 FR 42023, Oct. 17, 1985]

PART 3440—LICENSES TO MINE

Subpart 3440—Licenses to Mine

Sec.

3440.0-3 Authority.
3440.1 Terms.
3440.1-1 Forms.
3440.1-2 Qualifications.
3440.1-3 Limitations on coal use.
3440.1-4 Area and duration of license.
3440.1-5 Compliance with Surface Mining Control and Reclamation Act.
3440.1-6 Cancellation or forfeiture.

AUTHORITY: 30 U.S.C. 181 *et seq.*

SOURCE: 44 FR 42634, July 19, 1979, unless otherwise noted.

Subpart 3440—Licenses to Mine

§ 3440.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 8 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 208).

§ 3440.1 Terms.

§ 3440.1-1 Forms.

(a) Four copies of the application for a license to mine coal for domestic needs or for a renewal of such a license shall be filed on a form approved by the Director, or a substantial equivalent of the form, in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR subpart 1821).

(b) The original application or any renewal application shall be accompanied by the fee prescribed in subpart 3473 of this title, except when the application is filed by a relief agency.

§ 3440.1-2 Qualifications.

(a) An individual, association or individuals, municipality, charitable organization or relief agency may hold a license to mine. A municipality shall file the information required under § 3472.2-5(b) of this title.

(b) A license to mine shall not be issued to a private corporation.

(c) A license to mine shall not be issued to a minor, but may be issued to a legal guardian on behalf of a minor.

§ 3440.1-3 Limitations on coal use.

(a) A license to mine may be issued to a municipality for the nonprofit mining and disposal of coal to its residents for household use only. Under such a license, a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

(b) Coal extracted under a license to mine shall not be disposed of for profit.

§ 3440.1-4 Area and duration of license.

(a) A license to mine for an individual or association in the absence of unusual conditions or necessity, shall be limited to a legal subdivision of 40 acres or less and may be revoked at any time. Each license to mine shall terminate at the end of 2 years from the date of issuance, unless an application for a 2 year renewal is filed and approved before its termination date.

(b) A license to mine to a municipality may not exceed 320 acres for a municipality of less than 100,000 population, 1,280 acres for a municipality between 100,000 and 150,000 population, and 2,560 acres for a municipality of 150,000 population or more. A license to mine to a municipality shall terminate at the end of 4 years from the date of issuance, unless an application for a 4 year renewal is filed and approved before the termination date.

(c) (1) The authorized officer may authorize a recognized and established relief agency of any state upon the agency's request, to take government-owned coal deposits within the state and provide the coal to localities where it is needed to supply families on the rolls of such agency who require coal for household use but are unable to pay for that coal.

(2) Tracts shall be selected in areas assessed as acceptable for mining operations and at points convenient to supply the families in a locality. Each family shall be restricted to the amount of coal actually needed for its use, not to exceed 20 tons annually.

(3) Coal shall be taken from such tracts only by those with written authority from the relief agency. All mining shall be done pursuant to such authorization.

[44 FR 42634, July 19, 1979, as amended at 47 FR 33146, July 30, 1982]

§ 3440.1-5 Compliance with Surface Mining Control and Reclamation Act.

Mining on a license to mine shall not commence without a permit issued by the Surface Mining Officer unless the operation is exempt from the permit requirements under 30 CFR 700.11.

[44 FR 42634, July 19, 1979. Redesignated and amended at 47 FR 33146, July 30, 1982]

§ 3440.1-6 Cancellation or forfeiture.

Any license to mine may be canceled or forfeited for violation of the Act under which the license to mine was issued, applicable Federal laws and regulations, or the terms and conditions of the license to mine.

[47 FR 33146, July 30, 1982]

PART 3450—MANAGEMENT OF EXISTING LEASES

Subpart 3451—Continuation of Leases: Readjustment of Terms

Sec.
3451.1 Readjustment of lease terms.
3451.2 Notification of readjusted lease terms.

Subpart 3452—Relinquishment, Cancellation, and Termination

3452.1 Relinquishment.
3452.1-1 General.
3452.1-2 Where filed.
3452.1-3 Acceptance.
3452.2 Cancellation.
3452.2-1 Cause for cancellation.
3452.2-2 Cancellation procedure.
3452.3 Termination.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

3453.1 Qualifications.
3453.2 Requirements.
3453.2-1 Application.
3453.2-2 Forms and statements.
3453.2-3 Filing location and fee.
3453.2-4 Bonds.
3453.2-5 Effect of partial assignment.
3453.3 Approval.
3453.3-1 Conditions for approval.
3453.3-2 Disapproval of transfers.
3453.3-3 Effective date.
3453.3-4 Extensions.

AUTHORITY: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 *et seq.*; and 43 U.S.C. 1701 *et seq.*

SOURCE: 44 FR 42635, July 19, 1979, unless otherwise noted.

Subpart 3451—Continuation of Leases: Readjustment of Terms

§ 3451.1 Readjustment of lease terms.

(a) (1) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and, if the lease is extended, each 10-year period thereafter.

(2) Any lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall

be readjusted to conform to the minimum prescribed in that section.

(b) If the lease became subject to readjustment of terms and conditions before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee whether or not a readjustment would be made, the terms and conditions of that lease shall not be readjusted retroactively to conform to the requirements of the Federal Coal Leasing Amendments Act of 1976.

(c)(1) The authorized officer shall, prior to the expiration of the current or initial 20-year period or any succeeding 10-year period thereafter, notify the lessee of any lease which becomes subject to readjustment after June 1, 1980, whether any readjustment of terms and conditions will be made prior to the expiration of the initial 20-year period or any succeeding 10-year period thereafter. On such a lease the failure to so notify the lessee shall mean that the United States is waiving its right to readjust the lease for the readjustment period in question.

(2) In any notification that a lease will be readjusted under this subsection, the authorized officer will prescribe when the decision transmitting the readjusted lease terms will be sent to the lessee. The time for transmitting the information will be as soon as possible after the notice that the lease shall be readjusted, but will not be longer than 2 years after such notice. Failure to send the decision transmitting the readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

(d) In the notification that the lease will be readjusted, the authorized officer may require the lessee to furnish information specified in § 3422.3–4 of this title for review by the Attorney General as required by section 27(1) of the Mineral Leasing Act of 1920, as amended. If the authorized officer requests the information specified, no lease readjustment shall be effective until 30 days after the authorized officer has transmitted the required information to the Attorney General. The lease shall be subject to cancellation if the lessee fails to furnish the required information within the time allowed.

(e) The Governor of the affected State will be sent a copy of the readjusted lease terms.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33146, July 30, 1982; 48 FR 37656, Aug. 19, 1983; 53 FR 37300, Sept. 26, 1988]

§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the readjusted lease terms, the authorized officer will, within the time specified in the notice that the lease shall be readjusted, notify the lessee by decision of the readjusted lease terms.

(b) The decision transmitting the readjusted lease terms and conditions to the lessee(s) of record shall constitute the final action of the Bureau of Land Management on all the provisions contained in a readjusted lease and will be provided to the lessee(s) of record prior to the anniversary date. The effective date of the readjusted lease shall not be affected by the filing of any appeal of, or a civil suit regarding, any of the readjusted terms and conditions.

(c) The readjusted lease terms and conditions shall become effective on the anniversary date;

(d) The lessee may appeal the decision of the authorized officer in accordance with the procedure set out in 43 CFR part 4; and

(e) Regardless of whether an appeal is filed by the lessee(s), all of the readjusted lease terms and conditions, including, but not limited to, the reporting and payment of rental and royalty, shall be effective on the anniversary date.

[47 FR 33146, July 30, 1982, and 53 FR 37300, Sept. 26, 1988]

Subpart 3452—Relinquishment, Cancellation, and Termination

§ 3452.1 Relinquishment.

§ 3452.1–1 General.

The lessee may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres) or any bed of the coal deposit therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished. If the authorized officer accepts the relinquishment of any coal deposits in a lease, the coal reserves shall be adjusted in accordance with part 3480 of this title.

[47 FR 33147, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

§ 3452.1-2 Where filed.

A relinquishment shall be filed in triplicate by the lessee in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR subpart 1821).

§ 3452.1-3 Acceptance.

The effective date of the lease relinquishment shall, upon approval by an authorized officer, be the date on which the lessee filed the lease relinquishment. No relinquishment shall be approved until the authorized officer determines that the relinquishment will not impair the public interest, that the accrued rentals and royalties have been paid and that all the obligations of the lessee under the regulations and terms of the lease have been met.

[47 FR 33147, July 30, 1982]

§ 3452.2 Cancellation.

§ 3452.2-1 Cause for cancellation.

(a) The authorized officer, after compliance with § 3452.2-2 of this title, may take the appropriate steps to institute proceedings in a court of competent jurisdiction for the cancellation of the lease if the lessee: (1) Fails to comply with the provisions of the Mineral Leasing Act of 1920, as amended; (2) fails to comply with any applicable general regulations; or (3) defaults in the performance of any of the terms, covenants, and stipulations of the lease.

(b) Any lease issued before August 4, 1976, on which the lessee does not meet the diligent development requirements or any lease whenever issued on which the lessee does not meet the continued operation requirements shall be subject to cancellation in whole or in part. In deciding whether to initiate lease cancellation proceedings under this subsection, the Secretary shall not consider adverse circumstances which arise out of (1) normally foreseeable costs of compliance with requirements for environmental protection; (2) commonly experienced delays in delivery of supplies or equipment; or (3) inability to obtain sufficient sales.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

§ 3452.2-2 Cancellation procedure.

The lessee shall be given notice of any default, breach or cause of forfeiture and be afforded 30 days to correct the default, to request an extension of time in which to correct the default, or to submit evidence showing why the lease should not be cancelled. The Governor of the affected State(s) shall be given reasonable notice of action taken by the Department of the Interior to initiate cancellation of the lease.

[44 FR 42635, July 19, 1979, as amended at 48 FR 37656, Aug. 19, 1983]

§ 3452.3 Termination.

(a) Any lease issued or readjusted after August 4, 1976, shall be terminated if the lessee does not meet the diligent development requirements.

(b) Should a lease be relinquished, cancelled or terminated for any reason, all deferred bonus payments shall be immediately payable and all rentals and royalties, including advance royalties, already paid or due, shall be forfeited to the United States.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

§ 3453.1 Qualifications.

(a) Leases may be transferred in whole or in part to any person, association or corporation qualified under subpart 3472 of this title to hold such leases, except as provided by § 3420.1-4(b)(1)(iv) and (2)(ii) of this title.

(b) Preference right lease applications may be transferred as a whole only to a person, association or corporation qualified under subpart 3472 of this title to hold a lease.

(c) Exploration licenses may be transferred in whole or in part subject to § 3453.3(b) of this title.

[47 FR 33147, July 30, 1982]

§ 3453.2 Requirements.

§ 3453.2-1 Application.

Applications for approval of any transfer of a lease, preference right lease application or exploration license or any interest in a lease or license, whether by direct assignment, working agreement, transfer of royalty interest, sublease, or otherwise, shall be filed within 90 days from final execution.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

§ 3453.2-2 Forms and statements.

(a) Transfers of any record title interest shall be filed in triplicate and shall be accompanied by a request for approval from the transferee.

(b) No specific form need be used for requests for approval of transfers. The request for approval shall contain evidence of the transferee's qualifications, including a statement of Federal coal lease acreage holdings. This evidence shall consist of the same showing of qualifications required of a lease applicant by subpart 3472 of this title. A single signed copy of the qualifications statement is sufficient.

(c) A separate instrument of transfer shall be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation involving more than one lease are filed at the same time, one request for approval and one showing as to the qualifications of the transferee shall be sufficient.

(d) A single signed copy of all other instruments of transfer is sufficient, except that collateral assignments and other security or mortgage documents shall not be accepted for filing.

(e) Any transfer of a record title interest or assignment of operating rights shall be accompanied by the transferee's submission of the information specified in § 3422.3-4 of this title, including the holdings of any affiliate(s) (including joint ventures) of the transferees, or a statement incorporating a prior submission of the specified information by reference to the date and lease, license or application serial number of the submission, and containing any and all changes in holdings since the date of the prior submission.

(f) Any document of transfer which does not contain a description of all consideration or value paid or promised for the transfer shall be accompanied by a separate statement of all consideration or value, whether cash, property, future payments or any other type of consideration, paid or promised for the transfer.

(g) Information submitted to comply with paragraphs (e) and (f) of this section may be labeled as proprietary data and shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33147, July 30, 1982]

§ 3453.2-3 Filing location and fee.

Instruments of transfer and requests for approval shall be filed in the Bureau of Land Management office having jurisdiction over the leased lands proposed for transfer (see 43 CFR subpart 1821). Each instrument of transfer shall be accompanied by a nonrefundable filing fee (see 43 CFR 3473.2).

[47 FR 33147, July 30, 1982]

§ 3453.2-4 Bonds.

(a) If a bond is required, it shall be furnished before a lease, preference right lease application or exploration license may be approved for transfer. If the original lease, preference right lease application or exploration license required the maintenance of a bond, the transferee shall submit either a written consent from the surety to the substitution of the transferee as principal or a new bond with the transferee as principal. Transfers of any part of the leased or licensed lands shall be described by legal subdivisions. Before any transfer of part of a lease or license is approved, the transferee shall submit: (1) A written statement from the surety that it agrees to the transfer and that it agrees to remain bound as to the interest retained by the lessee or licensee; and (2) a new bond with the tranferee as principal covering the portion transferred.

(b) The transferor and the surety shall continue to be responsible for the performance of any obligation under the lease, preference right lease application or exploration license until the effective date of the approval of the transfer. If the transfer is not approved, the obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including any sublessee, applicant or licensee, and the transferee's surety shall be responsible for all lease, application or license obligations, notwithstanding any terms of the transfer to the contrary.

[47 FR 33147, July 30, 1982, as amended at 47 FR 38131, Aug. 30, 1982]

§ 3453.2-5 Effect of partial assignment.

A transfer of full record-title to only part of the lands, or any bed of the coal deposits therein, shall segregate the transferred and retained portions into separate and distinct leases or licenses, with the retained portion keeping the original serial number. The newly segregated lease or license shall be assigned a new serial number and shall contain the same terms and conditions as the original lease or license.

[47 FR 33148, July 30, 1982]

§ 3453.3 Approval.

§ 3453.3-1 Conditions for approval.

(a) No transfer of a lease shall be approved if:

(1) The transferee is not qualified to hold a lease or an interest in a lease under subpart 3472 of this title or under §§ 3420.1-3(b)(1)(iv) and 3420.1-3(b)(2)(ii) of this title;

(2) The lease bond is insufficient;

(3) The filing fee has not been submitted;

(4) The transferee would hold the lease in violation of the acreage requirements set out in subpart 3472 of this title;

(5) The transfer would create an overriding royalty or other interest in violation of § 3473.3-2 of this title;

(6) The lease account is not in good standing;

(7) The information required under § 3453.2-2(e) and (f) of this title has not been submitted; or

(8) The transferee is subject to the prohibition in § 3472.1-2(e) of this title.

(b) When the licensee proposes to transfer an exploration license, any other participating parties in the license shall be given the right of first refusal. If none of the participating parties wishes to assume the license, the license may be transferred if:

(1) The exploration bond is sufficient;

(2) The filing fee has been submitted; and

(3) The license account is in good standing.

(c) A preference right lease application may be transferred as a whole only to any party qualified to hold a lease under subpart 3472 of this title.

[47 FR 33148, July 30, 1982, as amended at 50 FR 42023, Oct. 17, 1985]

§ 3453.3-2 Disapproval of transfers.

(a) The authorized officer shall deny approval of a transfer if any reason why the transfer cannot be approved (listed in § 3453.3-1 of this title) is not cured within the time established by the authorized officer in a decision notifying the applicant for approval why the transfer cannot be approved.

(b) The authorized officer shall not approve a transfer of a lease until 30 days after the requirements of § 3422.3-4 of this title have been met.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33148, July 30, 1982]

§ 3453.3-3 Effective date.

A transfer shall take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests in writing, the first day of the month of the approval. The Governor of the affected State(s) shall be given reasonable notice of any lease transfer.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33148, July 30, 1982; 48 FR 37656, Aug. 19, 1983]

§ 3453.3-4 Extensions.

(a) The filing of or approval of any transfer shall not alter any terms or extend any time periods under the lease, including those dealing with readjustment of the lease and the diligent development and continued operation on the lease.

(b) The filing of or approval of a transfer of an exploration license shall not extend the term of the license beyond the statutory 2-year maximum.

[44 FR 42635, July 19, 1979, as amended at 47 FR 33148, July 30, 1982; 47 FR 38131, Aug. 30, 1982]

PART 3460—ENVIRONMENT

Subpart 3461—Federal Lands Review: Unsuitability for Mining

Sec.

3461.0-3 Authority.
3461.0-6 Policy.
3461.0-7 Scope.
3461.1 Underground mining exemption from criteria.
3461.2 Unsuitability assessment procedures.
3461.2-1 Assessment and land use planning.
3461.2-2 Consultation on unsuitability assessments.
3461.3 Relationship of leasing to unsuitability assessment.
3461.3-1 Application of criteria on unleased lands.
3461.3-2 Application of criteria on leased lands.
3461.4 Exploration.
3461.5 Criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining.

Subpart 3465—Surface Management and Protection

3465.0-1 Purpose.
3465.0-3 Authority.
3465.0-7 Applicability.
3465.1 Use of surface.
3465.2 Inspections and noncompliance.
3465.2-1 Inspections.
3465.2-2 Discovery of noncompliance.
3465.2-3 Failure of lessee or holder of license to mine to act.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521- 531 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 44 FR 42638, July 19, 1979, unless otherwise noted.

Subpart 3461—Federal Lands Review: Unsuitability for Mining

§ 3461.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) The general unsuitability criteria in section 522(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(a));

(2) The Federal lands review in section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)); and

(3) The prohibitions against mining certain lands in section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)).

§ 3461.0-6 Policy.

The Department shall carry out the review of Federal lands under section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)) principally through land use planning assessments by the surface management agency regarding the unsuitability of Federal lands for all or certain stipulated methods of coal mining.

§ 3461.0-7 Scope.

Each criterion in § 3461.1 of this title uses the phrase "shall be considered unsuitable" as shorthand for "shall be considered unsuitable for all or certain stipulated methods of coal mining involving surface coal mining operations, as defined in § 3400.0-5(mm) of this title.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33148, July 30, 1982]

§ 3461.1 Underground mining exemption from criteria.

(a) Federal lands with coal deposits that would be mined by underground mining methods shall not be assessed as unsuitable where there would be no surface coal mining operations, as defined in § 3400.0-5 of this title, on any lease, if issued.

(b) Where underground mining will include surface operations and surface impacts on Federal lands to which a criterion applies, the lands shall be assessed as unsuitable unless the surface management agency finds that a relevant exception or exemption applies.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

§ 3461.2 Unsuitability assessment procedures.

§ 3461.2-1 Assessment and land use planning.

(a)(1) Each of the unsuitability criteria shall be applied to all coal lands with development potential identified in the comprehensive land use plan or land use analysis. For areas where 1 or more unsuitability conditions are found and for which the authorized officer of the surface management agency could otherwise regard coal mining as a likely use, the exceptions and exemptions for each criterion may be applied.

(2) Public comments on the application of the unsuitability criteria shall be solicited by a notice published in the FEDERAL REGISTER. This call for comments may be part of the call for public comments on the draft land-use plan or land-use analysis. This notice shall announce the availability of maps and other information describing the results of the application and the application process used.

(3) The authorized officer of the surface management agency shall describe in the comprehensive land use plan or land use analysis the results of the application of each unsuitability criterion, exception and exemption. The authorized officer of the surface management agency shall state in the plan or analysis those areas which could be leased only subject to conditions or stipulations to conform to the application of the criteria or exceptions. Such areas may ultimately be leased provided that these conditions or stipulations are contained in the lease.

(b)(1) The authorized officer shall make his/her assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when the data needed to make an assessment with reasonable certainty would be generated. It the case of Criterion 19, application shall be made before approval of the mining permit. In the case of other deferred criteria application shall be made prior to finalizing the environmental analysis for the area being studied for coal leasing. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of Criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his/her assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment on the adequacy of the application as required by paragraph (a)(2) of this section.

(2) No lease tract shall be analyzed in a final regional lease sale environmental impact statement prepared under § 3420.4-5 of this title without significant data material to the application to the tract of each criterion described in § 3461.1 of this title, except, where necessary, criterion 19. If the data are lacking for the application of a criterion or exception to only a portion of the tract, and if the authorized officer determines that it is likely the stipulations in the lease or permit

conduct surface coal mining operations could avoid any problems which may result from subsequent application of the criterion or exception, such tract may be included and analyzed in the regional lease sale environmental impact statement.

(c) Any unsuitability assessments which result either from a designation or a termination of a designation of Federal lands as unsuitable by the Office of Surface Mining Reclamation and Enforcement, or from changes warranted by additional data acquired in the activity planning process, may be made without formally revising or amending the comprehensive land use plan or analysis.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982; 51 FR 18888, May 23, 1986. Redesignated and amended at 52 FR 46473, Dec. 8, 1987]

§ 3461.2-2 Consultation on unsuitability assessments.

(a) Prior to adopting a comprehensive land use plan or land use analysis which assesses Federal lands as unsuitable for coal mining, the Secretary or other surface management agency shall complete the consultation set out in §§ 3420.1-6 and 3420.1-7 of this title.

(b) When consultation or concurrence is required in the application of any criterion or exception in § 3461.1 of this title, the request for advice or concurrence, and the reply thereto, shall be in writing. Unless another period is provided by law, the authorized officer shall specify that the requested advice, concurrence or nonconcurrence be made within 30 days.

(c) When the authorized officer does ot receive a response either to a re- uest for concurrence which is re- uired by this subpart but not by law, r to consultation within the specified me, he or she may proceed as though oncurrence had been given or consul- ation had occurred.

4 FR 42638, July 19, 1979, as amended at FR 33149, July 30, 1982. Redesignated at FR 46473, Dec. 8, 1987]

§ 3461.3 Relationship of leasing to unsuitability assessment.

§ 3461.3-1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall only be applied, prior to lease issuance, to all lands leased after July 19, 1979.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific lease application; or

(2) During land use planning under the provisions of § 3420.1-4 of this title.

[47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

§ 3461.3-2 Application of criteria on leased lands.

The unsuitability criteria shall not be applied to leased lands.

[47 FR 33149, July 30, 1982. Redesignated at 52 FR 46473, Dec. 8, 1987]

§ 3461.4 Exploration.

(a) Assessment of any area as unsuitable for all or certain stipulated methods of coal mining operations pursuant to section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272) and the regulations of this subpart does not prohibit exploration of such area under subpart 3410 and Part 3480 of this title.

(b) An application for an exploration license on any lands assessed as unsuitable for all or certain stipulated methods of coal mining shall be reviewed by the Bureau of Land Management to ensure that exploration does not harm any value for which the area has been assessed as unsuitable.

[44 FR 42638, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985. Further redesignated at 52 FR 46473, Dec. 8, 1987]

§ 3461.5 Criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining.

(a)(1) *Criterion Number 1.* All Federal lands included in the following land systems or categories shall be considered unsuitable: National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Recreation Areas, lands acquired with money derived from the Land and Water Conservation Fund, National Forests, and Federal lands in incorporated cities, towns, and villages.

(2) *Exceptions.* (i) A lease may be issued within the boundaries of any National Forest if the Secretary finds no significant recreational, timber, economic or other values which may be incompatible with the lease; and (A) surface operations and impacts are incident to an underground coal mine, or (B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those National Forests west of the 100th Meridian, that surface mining may be in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1976 and the Surface Mining Control and Reclamation Act of 1977.

(ii) A lease may be issued within the Custer National Forest with the consent of the Department of Agriculture as long as no surface coal mining operations are permitted.

(3) *Exemptions.* The application of this criterion to lands within the listed land systems and categories is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977.

(b)(1) *Criterion Number 2.* Federal lands that are within rights-of-way or easements or within surface leases for residential, commercial, industrial, or other public purposes, on federally owned surface shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued, and mining operations approved, in such areas if the surface management agency determines that:

(i) All or certain types of coal development (e.g., underground mining) will not interfere with the purpose of the right-of-way or easement; or

(ii) The right-of-way or easement was granted for mining purposes; or

(iii) The right-of-way or easement was issued for a purpose for which it is not being used; or

(iv) The parties involved in the right-of-way or easement agree, in writing, to leasing; or

(v) It is impractical to exclude such areas due to the location of coal and method of mining and such areas or uses can be protected through appropriate stipulations.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(c)(1) *Criterion Number 3.* The terms used in this criterion have the meaning set out in the Office of Surface Mining Reclamation and Enforcement regulations at Chapter VII of Title 30 of the Code of Federal Regulations. Federal lands affected by section 522(e) (4) and (5) of the Surface Mining Control and Reclamation Act of 1977 shall be considered unsuitable. This includes lands within 100 feet of the outside line of the right-of-way of a public road or within 100 feet of a cemetery, or within 300 feet of any public building, school, church, community or institutional building or public park or within 300 feet of an occupied dwelling.

(2) *Exceptions.* A lease may be issued for lands:

(i) Used as mine access roads or haulage roads that join the right-of-way for a public road;

(ii) For which the Office of Surface Mining Reclamation and Enforcement has issued a permit to have public roads relocated;

(iii) If, after public notice and opportunity for public hearing in the locality, a written finding is made by the authorized officer that the interests of the public and the landowners affected by mining within 100 feet of a public road will be protected.

(iv) For which owners of occupied dwellings have given written permission to mine within 300 feet of their buildings.

(3) *Exemptions.* The application of this criterion is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977.

(d)(1) *Criterion Number 4.* Federal lands designated as wilderness study areas shall be considered unsuitable while under review by the Administration and the Congress for possible wilderness designation. For any Federal land which is to be leased or mined prior to completion of the wilderness inventory by the surface management agency, the environmental assessment or impact statement on the lease sale or mine plan shall consider whether the land possesses the characteristics of a wilderness study area. If the finding is affirmative, the land shall be considered unsuitable, unless issuance of noncompetitive coal leases and mining on leases is authorized under the Wilderness Act and the Federal Land Policy and Management Act of 1976.

(2) *Exemption.* The application of this criterion to lands for which the Bureau of Land Management is the surface management agency and lands n designated wilderness areas in Na-ional Forests is subject to valid existng rights.

(e)(1) *Criterion Number 5.* Scenic Federal lands designated by visual re-ource management analysis as Class I an areas of outstanding scenic quality r high vessel sensitivity) but not cur-ently on the National Register of atural Landmarks shall be consid-red unsuitable.

(2) *Exception.* A lease may be issued the surface management agency de-ermines that surface coal mining op-rations will not significantly diminish r adversely affect the scenic quality f the designated area.

(3) *Exemptions.* This criterion does ot apply to lands: to which the opera-r has made substantial legal and fi-ancial commitments prior to January 1977; on which surface coal mining perations were being conducted on ugust 3, 1977, or which include oper-ions on which a permit has been sued.

(f)(1) *Criterion Number 6.* Federal nds under permit by the surface anagement agency, and being used for scientific studies involving food or fiber production, natural resources, or technology demonstrations and experiments shall be considered unsuitable for the duration of the study, demonstration or experiment, except where mining could be conducted in such a way as to enhance or not jeopardize the purposes of the study, as determined by the surface management agency, or where the principal scientific user or agency gives written concurrence to all or certain methods of mining.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(g)(1) *Criterion Number 7.* All publicly or privately owned places which are included in the National Register of Historic Places shall be considered unsuitable. This shall include any areas that the surface management agency determines, after consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Officer, are necessary to protect the inherent values of the property that made it eligible for listing in the National Register.

(2) *Exceptions.* All or certain stipulated methods of coal mining may be allowed if, after consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Officer, they are approved by the surface management agency, and, where appropriate, the State or local agency with jurisdiction over the historic site.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(h)(1) *Criterion Number 8.* Federal lands designated as natural areas or as National Natural Landmarks shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operation approved in an area or site if the surface management agency determines that:

(i) The use of appropriate stipulated mining technology will result in no significant adverse impact to the area or site; or

(ii) The mining of the coal resource under appropriate stipulations will enhance information recovery (e.g., paleontological sites).

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which includes operations on which a permit has been issued.

(i) (1) *Criterion Number 9.* Federally designated critical habitat for listed threatened or endangered plant and animal species, and habitat proposed to be designated as critical for listed threatened or endangered plant and animal species or species proposed for listing, and habitat for Federal threatened or endangered species which is determined by the Fish and Wildlife Service and the surface management agency to be of essential value and where the presence of threatened or endangered species has been scientifically documented, shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the Fish and Wildlife Service, the Service determines that the proposed activity is not likely to jeopardize the continued existence of the listed species and/or its critical habitat.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(j)(1) *Criterion Number 10.* Federal lands containing habitat determined to be critical or essential for plant or animal species listed by a state pursuant to state law as endangered or threatened shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the state, the surface management agency determines that the species will not be adversely affected by all or certain stipulated methods of coal mining.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(k)(1) *Criterion Number 11.* A bald or golden eagle nest or site on Federal lands that is determined to be active and an appropriate buffer zone of land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exceptions.* A lease may be issued if:

(i) It can be conditioned in such a way, either in manner or period of operation, that eagles will not be disturbed during breeding season; or

(ii) The surface management agency, with the concurrence of the Fish and Wildlife Service, determines that the golden eagle nest(s) will be moved.

(iii) Buffer zones may be decreased if the surface management agency determines that the active eagle nests will not be adversely affected.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(l)(1) *Criterion Number 12.* Bald and golden eagle roost and concentration areas on Federal lands used during migration and wintering shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that all or certain stipulated methods of coal mining can be conducted in such a way, and during such periods of time, to ensure that eagles shall not be adversely disturbed.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(m)(1) *Criterion Number 13.* Federal lands containing a falcon (excluding kestrel) cliff nesting site with an active nest and a buffer zone of Federal land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the falcon habitat during the periods when such habitat is used by the falcons.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(n)(1) *Criterion Number 14.* Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the surface management agency and the Fish and Wildlife Service, shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(3) *Exemption.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(o)(1) *Criteron Number 15.* Federal lands which the surface management agency and the state jointly agree are habitat for resident species of fish, wildlife and plants of high interest to the state and which are essential for maintaining these priority wildlife and plant species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

(ii) Winter ranges crucial for deer, antelope, and elk;

(iii) Migration corridor for elk; and

(iv) Extremes of range for plant species; and

A lease may be issued if, after consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not have a significant long-term impact on the species being protected.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(p)(1) *Criterion Number 16.* Federal lands in riverine, coastal and special floodplains (100-year recurrence interval) on which the surface management agency determines that mining could not be undertaken without substantial threat of loss of life or property shall be considered unsuitable for all or certain stipulated methods of coal mining.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(q)(1) *Criterion Number 17.* Federal lands which have been committed by the surface management agency to use as municipal watersheds shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency in consultation with the municipality (incorporated entity) or the responsible governmental unit determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(r)(1) *Criterion Number 18.* Federal lands with National Resource Waters, as identified by states in their water quality management plans, and a buffer zone of Federal lands ¼ mile from the outer edge of the far bahks of the water, shall be unsuitable.

(2) *Exception.* The buffer zone may be eliminated or reduced in size where the surface management agency determines that it is not necessary to protect the National Resource Waters.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(s)(1) *Criterion Number 19.* Federal lands identified by the surface management agency, in consultation with the state in which they are located, as alluvial valley floors according to the definition in § 3400.0-5(a) of this title, the standards in 30 CFR Part 822, the final alluvial valley floor guidelines of the Office of Surface Mining Reclamation and Enforcement when published, and approved state programs under the Surface Mining Control and Reclamation Act of 1977, where mining would interrupt, discontinue, or preclude farming, shall be considered unsuitable. Additionally, when mining Federal land outside an alluvial valley floor would materially damage the quantity or quality of water in surface or underground water systems that would supply alluvial valley floors, the land shall be considered unsuitable.

(2) *Exemptions.* This criterion does not apply to surface coal mining operations which produced coal in commercial quantities in the year preceding August 3, 1977, or which had obtained a permit to conduct surface coal mining operations.

(t)(1) *Criterion Number 20.* Federal lands in a state to which is applicable a criterion (i) proposed by the state or Indian tribe located in the planning area, and (ii) adopted by rulemaking by the Secretary, shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued when:

(i) Such criterion is adopted by the Secretary less than 6 months prior to the publication of the draft comprehensive land use plan or land use analysis, plan, or supplement to a comprehensive land use plan, for the area in which such land is included, or

(ii) After consultation with the state or affected Indian tribe, the surface management agency determines that all or certain stipulated methods of coal mining will not adversely affect the value which the criterion would protect.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33148, July 30, 1982; 48 FR 54820, Dec. 7, 1983. Redesignated and amended at 52 FR 46473, Dec. 8 1987]

Subpart 3465—Surface Management and Protection

§ 3465.0-1 Purpose.

This subpart establishes rules for the management and protection of the surface of leased Federal lands when coal deposits are developed.

§ 3465.0-3 Authority.

These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

§ 3465.0-7 Applicability.

This subpart applies to leases and licenses to mine issued by the Bureau of Land Management for the development of Federal coal.

§ 3465.1 Use of surface.

(a) The operator shall use only that part of the surface area included in his lease or license to mine that has been included in an approved resource recovery and protection plan and mining permit (43 CFR 3482.1(b) and 30 CFR part 741).

(b) Separate leases, permits, or rights-of-way under the appropriate provisions in title 43 of the Code of Federal Regulations are required for the installation of power generation plants or commercial or industrial facilities on the lands in the lease or license to mine or for the use of mineral materials or timber from the land in the lease or license to mine.

(c) Other land uses under other authorities may be allowed on an area in a lease or license to mine provided there is no unreasonable conflict and that neither the mining operation nor the other use is jeopardized by the presence of the other.

[44 FR 42638, July 19, 1979, as amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

§ 3465.2 Inspections and noncompliance.

§ 3465.2-1 Inspections.

The authorized officer or his/her authorized representative shall have the right to enter lands under a lease or license to mine to inspect without advance notice or a search warrant, upon presentation of appropriate credentials, to determine whether the activities and conditions are in compliance with the applicable laws, regulations, notices and orders, terms and conditions of leases, licenses to mine or permits, and the requirements of the approved mining plan.

[44 FR 42638, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

§ 3465.2-2 Discovery of noncompliance.

(a) Upon discovery of activities or conditions that are not in compliance with the terms of a lease or license to mine, or with an approved permit (30 CFR part 741), but that do not pose a serious and imminent danger to the public or to resources and environmental quality, the authorized officer shall refer the matter to the Surface Mining Officer for remedial action, or take remedial action on matters of exploration outside the permit area.

(b) Upon discovery of activities or conditions that are not in compliance with the terms of a lease, license to mine, or with an approved permit and that do pose a serious and imminent danger to the health and safety of the public or to resources and environmental quality, the authorized officer may order the immediate cessation of the activities or conditions provided that the Surface Mining Officer is immediately informed of the issuance of any such emergency cessation order.

[44 FR 42638, July 19, 1979. Redesignated at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

§ 3465.2-3 Failure of lessee or holder of license to mine to act.

Failure of a lessee or the holder of a license to mine to comply with an immediate cessation order issued under § 3465.3-2(b) or with a written notice of noncompliance issued by the Surface Mining Officer in accordance with part 3480 of this title or 30 CFR Chapter VII, Subchapter D, or by the authorized officer in accordance with part 3480 of this title, shall be grounds for suspension of the permit and may be grounds for cancellation of the license to mine, or in accordance with subpart 3452 of this title, the lease.

[44 FR 42638, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Subpart 3471—Coal Management Provisions and Limitations

Sec.
3471.1 Land description requirements.
3471.1-1 Land description and coal deposit in application.
3471.1-2 Land description in lease.
3471.2 Effect of land transactions.
3471.2-1 Disposal of land with a reservation of minerals.
3471.2-2 Effect of conveyance to state or local entity.
3471.3 Cancellation or forfeiture.
3471.3-1 Protection of bona fide purchaser.
3471.3-2 Sale of underlying interests.
3471.4 Future interest, acquired lands.

Subpart 3472—Lease Qualification Requirements

3472.1 Qualifications.
3472.1-1 Qualified applicants and bidders.
3472.1-2 Special leasing qualifications.
3472.1-3 Acreage limitations.
3472.2 Filing of qualification statements.
3472.2-1 Sole party in interest statement.
3472.2-2 Contents of qualification statement.
3472.2-3 Signature of applicant.
3472.2-4 Special qualifications heirs, and devisees (estates).
3472.2-5 Special qualifications, public bodies.

Subpart 3473—Fees, Rentals, and Royalties

3473.1 Payments.
3473.1-1 Form of remittance.
3473.1-2 Where submitted.
3473.1-3 When paid.
3473.2 Fees.
3473.2-1 General fee provisions.
3473.2-2 Exemptions from fee provisions.
3473.3 Rentals and royalties.
3473.3-1 Rentals.
3473.3-2 Royalties.
3473.4 Suspension of operations, production, and payment obligations.

Subpart 3474—Bonds

3474.1 Bonding requirements.
3474.2 Type of bond required.
3474.3 Bond conversions.
3474.4 Qualified sureties.
Sec.
3474.5 Default.
3474.6 Termination of the period of liability.

Subpart 3475—Lease Terms

3475.1 Lease form.
3475.2 Duration of leases.
3475.3 Dating of leases.
3475.4 Land description.
3475.5 Diligent development and continued operation.
3475.6 Logical mining unit.

AUTHORITY: 30 U.S.C. 181 et seq., and 30 U.S.C. 351-359 and 99 Stat. 1266.

SOURCE: 44 FR 42643, July 19, 1979, unless otherwise noted.

Subpart 3471—Coal Management Provisions and Limitations

§ 3471.1 Land description requirements.

§ 3471.1-1 Land description and coal deposit in application.

(a) Any application for a lease, lease modification, or license to mine shall include a complete and accurate description of the lands for which the lease, lease modification, or license to mine is desired.

(b) If the land has been surveyed under the public land rectangular survey system, each application shall describe the land by legal subdivision (section, township, and range), or aliquot part thereof (but not less than 10 acres).

(c) Where protraction diagrams have been approved and the effective date has been published in the FEDERAL REGISTER, the application for land shown on such protraction diagrams and filed on or after the effective date shall contain a description of the land according to the section, township and range shown on the approved protraction diagrams.

(d)(1) If the land has not been surveyed on the ground and is not shown on the records as covered by protraction diagrams, the application shall describe the land by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form and connected by courses and distances to an official corner of the public land surveys. In Alaska, the description of unsurveyed land shall be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by an agency of the United States such as the Geological Survey, the National Oceanic and Atmospheric Administration, or the International Boundary Commission, if the record position is available to the general public.

(2)(i) If the land is acquired land in a non-public land state which has not been surveyed under the rectangular system of public land surveys, the land shall be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(ii) If the land constitutes less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into an identifiable point listed in the description in the deed or other document by which the United States acquired title to the land.

(iii) If the description in the deed or other document by which the United States acquired title to the land does not include the courses and distance between the successive angle points on the boundary of the desired tract, the description in the application shall be expanded to include such courses and distances.

(iv) The application shall be accompanied by a map on which the land is clearly marked showing its location with respect to the administrative unit or project of which it is a part. It is not necessary to submit a map if the land has been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system.

(v) If an acquisition tract number has been assigned by the acquiring agency to the tract, a description by tract number will be accepted.

(vi) Any accreted land not described in the deed to the United States shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions belong.

§ 3471.1-2 Land description in lease.

(a) All unsurveyed lands in a public land survey system state shall have a cadastral survey performed at Federal Government expense before a lease or license to mine may be issued, except for areas covered by a skeleton survey, i.e. Utah and Alaska, and the lease when issued shall be described by legal subdivision (section, township, and range), or aliquot part thereof (but no less than 10 acres).

(b) If the land is acquired land in a non-public land state, the land in the lease shall be described in the same manner provided for lease applications under § 3471.1-1(d)(2) of this title.

§ 3471.2 Effect of land transactions.

§ 3471.2-1 Disposal of land with a reservation of minerals.

(a) Where the lands included in a lease or license to mine have been or may be disposed of with reservation of the coal deposits, a lessee or the holder of a license to mine must comply fully with the law under which the reservation was made. See, among other laws, the Acts of March 3, 1909 (34 Stat. 844; 30 U.S.C. 81); June 22, 1910 (35 Stat. 583; 30 U.S.C. 83-85); December 29, 1916, as amended (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377); and October 21, 1976 (90 Stat. 2759; 43 U.S.C. 1719).

(b) Any sale or conveyance of acquired lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under the Mineral Leasing Act for Acquired Lands.

(c) Leases on acquired lands outstanding on August 7, 1947, and covering lands subject to the Mineral Leasing Act for Acquired Lands may be exchanged for new leases to be issued under that Act.

(d) When: (1) The coal is to be mined by other than underground mining techniques, (2) the surface of the land is owned by a qualified surface owner, and (3) the lease is issued after August 3, 1977, the lessee shall comply with the terms of the written consent of the qualified surface owner not inconsistent with Federal and state mined land reclamation laws and regulations.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33149, July 30, 1982]

§ 3471.2-2 Effect of conveyance to state or local entity.

(a) If the United States has conveyed the title to, or otherwise transferred control of the land surface containing the coal deposits to (1) any state or political subdivision, agency, or its instrumentality, (2) a college, any other educational corporation, or association, or (3) to a charitable or religious corporation or association, the transferee shall be notified by certified mail of the application for the license to mine or lease, or the scheduling of a lease sale. The transferee shall be given a reasonable period of time within which to suggest any stipulations necessary for the protection of existing surface improvements or uses to be included in the license or lease and state the supporting facts, or to file any objections to its issuance and state the supporting facts.

(b) Opposition by the state or local entity is not a bar to issuance of the license to mine or lease for the reserved minerals in the lands. (See, however, § 3461.1(b).) In each case, the final determination on whether to issue the license to mine or lease is based on the best interests of the public.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33149, July 30, 1982]

§ 3471.3 Cancellation or forfeiture.

§ 3471.3-1 Protection of bona fide purchaser.

(a) The Secretary's right to cancel or forfeit a lease for any violation shall not adversely affect the title or interest of a bona fide purchaser of any lease or any interest therein. A bona fide purchaser must be a person, association, or corporation qualified to hold such lease or interest, even though the holdings of the party or parties from which the lease or interest therein was acquired or their predecessor(s) in title (including the original lessee of the United States), may have been cancelled or forfeited for any such violation.

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws may be dismissed promptly as a party by showing that he/she holds and acquired his/her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws.

(c) If a party waives his or her rights under the lease, or if such rights are suspended by order of the Secretary pending a decision, rental payments and time counted against the term of the lease shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

[44 FR 42643, July 19, 1979. Redesignated and amended at 47 FR 33149, July 30, 1982]

§ 3471.3-2 Sale of underlying interests.

If, in any proceeding to cancel or forfeit a lease or any interest therein acquired in violation of any of the provisions of the mineral leasing laws, the lease or interest therein is cancelled or forfeited, and if there are valid options to acquire the lease or an interest therein that are not subject to cancellation, forfeiture, or compulsory disposition, this lease or interest therein shall be sold to the highest responsible qualified bidder by competitive bidding, in a manner similar to that provided for in the offering of leases by competitive bidding, subject to all outstanding valid interests and options. If less than the whole interest in the lease or interest therein is cancelled or forfeited, the partial interest shall be sold in the same way. If no satisfactory offer is obtained as a result of the competitive offering of a whole or partial interest, it may be sold by other methods that the authorized officer finds appropriate. However, the terms shall not be less favorable to the Government than those of the best competitive bid received.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33149, July 30, 1982]

§ 3471.4 Future interest, acquired lands.

An application to lease lands in which the United States has a future interest filed more than 2 years prior to the date of the vesting in the United States of the interest in the coal shall be rejected. Any application for a future interest lease outstanding at the time of the vesting in the United States of the present possessory interest in the coal shall not lapse, but shall continue to be treated under subpart 3425 of this title. (See 43 CFR 3472.1-2(g).)

[44 FR 42643, July 19, 1979, as amended at 47 FR 33149, July 30, 1982]

Subpart 3472—Lease Qualification Requirements

§ 3472.1 Qualifications.

§ 3472.1-1 Qualified applicants and bidders.

A lease may be issued only to (a) citizens of the United States; (b) associations of citizens organized under the laws of the United States or of any state thereof, which are authorized to hold such interests by the statute under which they are organized and by the instrument establishing their association; (c) corporations organized under the laws of the United States or of any state thereof, including a company or corporation operating a common carrier railroad; and (d) public bodies, including municipalities.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979]

§ 3472.1-2 Special leasing qualifications.

(a) Each applicant or bidder for a lease shall furnish a signed statement showing that, with the area applied or bid for, the applicant or bidder's interests in leases and lease applications, held directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3472.1-3 of this title.

(b) A lease shall not be issued to a minor but may be issued to a legal guardian or trustee on behalf of a minor.

(c) Every company or corporation operating a common carrier railroad shall make a statement that it needs the coal for which it seeks a lease solely for its own railroad use; that it operates main or branch lines in the state in which the lands involved are located; that the aggregate acreage in the leases and applications in which it holds an interest, directly or indirectly, does not exceed 10,240 acres; and that it does not hold more than one lease for each 200 miles of its railroad lines served or to be served from such coal deposits. This last requirement excludes spurs or switches, branch lines built to connect the leased coal with the railroad, and parts of the railroad operated mainly by power not produced by steam.

(d) Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, that corporation's application or bid for a lease shall be rejected, and that corporation's lease shall be subject to cancellation.

(e)(1)(i) On or after December 31, 1986, no lease shall be issued and no existing lease shall be transferred, to any entity, that holds and has held for 10 years any lease from which the entity is not producing the coal deposits in commercial quantities, except as authorized under the advance royalty or suspension provisions of part 3480 of this title, or paragraph (e)(4) or (5) of this section.

(ii) An entity seeking to obtain a working interest in a lease, or approval of a transfer under subpart 3453 of this title, shall qualify both on the date of determination of lessee qualifications and on the date the lease is issued or transfer approved.

(iii) Once a lease has been issued to a qualified entity or transfer approved for a lease under subpart 3453 of this title, disqualification at a later date shall not result in surrender of that lease, or recision of the approved transfer, except as provided in paragraph (e)(4) of this section.

(2)(i) Any entity seeking to obtain a lease or approval of a transfer of a lease pursuant to 43 CFR Group 3400 of this title shall certify, in writing, that the entity is in compliance with the Act and the requirements of this subpart. The entity's self-certification statement shall include:

(A) A statement that the entity is qualified to be issued a lease or to have a transfer approved in accordance with the presumption of control or the presumption of noncontrol requirements at § 3400.0-5(rr) of this title, and in accordance with the producing requirements at paragraph (e)(6) of this section;

(B) Justification rebutting the presumption of control requirements at § 3400.0-5(rr) of this title, if the entity's instruments of ownership of the voting securities of another entity or of its voting securities by another entity are 20 through 50 percent. The authorized officer, based on the written self-certification statement and other relevant information, shall determine whether the entity has rebutted the presumption of control.

(ii) If a lease is issued, or a transfer approved under subpart 3453 of this title, to an entity based upon an improper, written self-certification of compliance, the authorized officer shall administratively cancel the lease, or rescind the approved transfer, after complying with § 3452.2-2 of this title.

(3) The authorized officer may require an entity holding or seeking to hold an interest in a lease, to furnish, at any time, further evidence of compliance with the special leasing qualifications of this subpart.

(4)(i) An entity, seeking to qualify for lease issuance, or transfer approval under subpart 3453 of this title, shall not be disqualified under the provisions of this subpart if it has one of the following actions pending before the authorized officer for any lease that would otherwise disqualify it under this subpart:

(A) Request for lease relinquishment; or

(B) Application for arm's-length lease assignment; or

(C) Application for approval of a logical mining unit that the authorized officer determines would be producing on its effective date.

(ii) Once a lease has been issued, or transfer approved, to an entity that qualifies under paragraph (e)(4)(i) of this section, an adverse decision by the authorized officer on the pending action, or the withdrawal of the pending action by the applicant, shall result in termination of the lease or recision of the transfer approval. Such decision of the authorized officer shall be effective, regardless of appeal of that decision. The possibility of lease termination shall be included as a special stipulation in every lease issued to an entity that qualifies under paragraph (e)(4) of this section.

(iii) The entity shall not qualify for lease issuance or transfer under paragraph (e)(4)(i) of this section during the pendency of an appeal before the Office of Hearings and Appeals from an adverse decision by the authorized officer on any of the actions described in paragraph (e)(4)(i) of this section.

(iv)(A) Where an entity, qualified under this section, had an approved transfer of a lease under subpart 3453 of this title, the transferor retained a right-of-first-refusal, and the entity wishes to relinquish such lease if such lease would otherwise disqualify the entity under this subpart, the entity may file the relinquishment under subpart 3452 of this title. However, the entity shall:

(*1*) Submit sufficient documentation for the authorized officer to determine that, in fact, such a right-of-first-refusal exists and prevents approval or disapproval by the authorized officer of the pending relinquishment;

(*2*) Submit with the request for approval of the relinquishment a statement that action by the authorized officer on the pending relinquishment be conditioned on the execution, or lack thereof, of the assignment under the right-of-first-refusal, as well as on the approval or disapproval of the assignment, if executed, under subpart 3453 of this title;

(*3*) Submit an application for arm's-length lease assignment signed by the entity as well as proof that it has been submitted to the transferor that retained the right-of-first-refusal (e.g., copy of certified mail delivery); and

(*4*) Submit the name(s) and address(es) of the transferor(s) that retained the right-of-first-refusal.

(B) If the authorized officer determines, based on the information supplied under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal prevents action on the pending relinquishment, the authorized officer will send, via certified mail, return receipt requested, a request for additional information to the transferor that retained the right-of-first-refusal. The request shall state that the transferor that retained the right-of-first-refusal shall comply with subpart 3453 of this title within 30 days of receipt. If the transferor that retained the right-of-first-refusal does not comply within the 30-day time frame, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(C) If the authorized officer determines, pursuant to the information submitted under paragraph (e)(4)(iv)(A) of this section, that the right-of-first-refusal does not prevent action on the request for relinquishment, the authorized officer will:

(*1*) Disapprove the pending assignment and so notify the entity and the transferor that retained the right-of-first-refusal; and

(*2*) Process the request for relinquishment under subpart 3452 of this title.

(5) Leases that have been mined out (i.e., all recoverable reserves have been exhausted), as determined by the authorized officer, may be held for such purposes as reclamation without disqualification of the entity under the provisions of this subpart.

(6)(i) The authorized officer shall determine the date of first production for the purposes of establishing the beginning of the bracket, if applicable.

(ii) An entity shall not be disqualified under the provisions of this subpart if each lease that the entity holds is:

(A) Producing and is within its bracket;

(B) Producing and has produced commercial quantities during the bracket.

(C) Producing and has achieved production in commercial quantities (an entity holding such a lease is disqualified under section 2(a)(2)(A) of the Act from the end of the bracket until production in commercial quantities is achieved), for leases which fail to produce commercial quantities within the bracket;

(D) Producing in compliance with the diligent development and continued operation provisions of part 3480 of this title, for leases which began their first production of coal on or after August 4, 1976, after becoming subject to the diligence provisions of part 3480 of this title;

(E) Contained in an approved logical mining unit which is producing coal in accordance with the logical mining unit stipulations of approval pursuant to § 3487.1 (e) and (f) of this title; or

(F) Relieved of a producing obligation pursuant to paragraph (e) (1), (4), or (5) of this section.

(f) In order to qualify for a lease on acquired lands set apart for military and naval purposes, a governmental entity shall show that it produces electrical energy for sale to the public and that it is located in the state where the lands subject to the application or bid are located.

(g) Any applicant for a lease for lands in which the United States has a future interest shall submit documentation that he or she holds, in fee or by lease, the present interest in the coal deposit subject to the application.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979, and amended at 47 FR 33150, July 30, 1982; 51 FR 43922, Dec. 5, 1986; 52 FR 416, Jan. 6, 1987]

§ 3472.1-3 Acreage limitations.

(a)(1) No person, association, or corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation shall take, hold, own, or control at one time Federal coal leases, lease or lease modification applications, or bids on more than 46,080 acres in any one state and in no case on more than 100,000 acres in the United States.

(2) No person, association, or corporation holding, owning, or controlling leases, lease or lease modification applications or bids (individually or through any subsidiary, affiliate, or person under common control) on more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or lease application held on that date. However, it shall not be permitted to hold any additional interests in any further leases or lease applications until such time as its holdings, ownership, or control of leases or applications has been reduced below 100,000 acres within the United States.

(b)(1) In computing acreage held, owned or controlled, the accountable acreage of a party holding, owning or controlling an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. Any subsidiary, affiliate or person controlled by or under common control with any corporation, person or association holding, owning or controlling a Federal coal lease shall be charged with lease acreage to the same extent as such corporation, person or association. The accountable acreage of a party holding, owning or controlling an interest in a corporation or association shall be that party's proportionate part of the acreage held, owned or controlled by such corporation or association. However, no party shall be charged with its pro rata share of any acreage held, owned or controlled by any corporation or association unless that party is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such corporation or association.

(2) On acquired lands, if the United States owns only a fractional interest in the coal resources of the lands involved, only that part of the total acreage involved in the lease, proportionate to the extent of ownership by the United States of the coal resources, shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979, and amended at 47 FR 33150, July 30, 1982]

§ 3472.2 Filing of qualification statements.

§ 3472.2-1 Sole party in interest statement.

Every applicant or bidder for a lease or license to mine shall submit to the Bureau of Land Management State Office having jurisdiction over the lands in the application or subject to the bid (43 CFR subpart 1821) at the time of filing the application or bid a signed statement that the applicant is the sole party in interest in the application or bid, and the lease or license to mine, if issued. If the applicant or bidder is or will not be the sole party in interest, the applicant or bidder shall set forth the names of the other interested parties in the application or bid. A separate or joint statement shall be signed by them and by the applicant or bidder setting forth the nature and extent of the interest of each in the application or bid, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, shall accompany the application or bid. All interested parties shall furnish evidence of their qualifications to hold such interest in the lease or license to mine including a statement regarding knowledge of written consent from any qualified surface owner for the area involved (43 CFR subpart 3427).

§ 3472.2-2 Contents of qualification statement.

(a) If the applicant or bidder is an individual, he shall submit a signed statement setting forth his citizenship with each application or bid for a license to mine or lease.

(b) If the applicant or bidder is an association or partnership, the application or bid shall be accompanied by a certified copy of the articles of association or partnership, together with a statement showing (1) that the association or partnership is authorized to hold a lease or license to mine; (2) that the member or partner executing the lease or license to mine is authorized to act on behalf of the association or partnership in such matters; (3) the names and addresses of all members owning or controlling more than 10 percent of the association or partnership and their citizenship and holdings.

(c) If the applicant or bidder for a lease or license to mine is a corporation, it shall submit statements showing:

(1) The state of incorporation;

(2) That the corporation is authorized to hold leases or licenses to mine;

(3) The names of the officers authorized to act on behalf of the corporation;

(4) The percentage of the corporation's voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and

(5) The name, address, citizenship and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Applications on behalf of a corporation executed by other than an officer named under paragraph (c)(3) of this section shall be accompanied by proof of the signatory's authority to execute the instrument. The applicant shall submit the same information as is required in the preceding paragraph for any of its corporate stockholders holding, owning or controlling 10 percent or more of its stock of any class.

(d) To qualify as a small business for the purpose of bidding on any tract to be offered as part of a special opportunity lease sale for small businesses, the bidder shall submit evidence demonstrating qualification under 13 CFR part 121.

(e) Where there is a legal guardian or trustee, the following shall be provided:

(1) A copy of the court order or other document authorizing the guardian or trustee to act as such and to fulfill in behalf of the ward or beneficiary all obligations of the lease or other obligations arising thereunder; the person submitting any such document shall in some manner indicate its authenticity;

(2) A statement by the guardian or trustee as to his or her citizenship and holdings (of acreage in Federal coal leases) in any capacity; i.e., individually and for the benefit of any person; and

(3) A statement by each ward and beneficiary as to his or her citizenship and holdings; if the ward or beneficiary is a minor, the statement shall be executed for the minor by the guardian or trustee, as appropriate.

(f) The Department reserves the right to request any supplementary information that is needed to accredit acreage under § 3472.1-3 of this title.

(g) Any applicant or bidder who has previously filed a qualification statement may, if it certifies that the prior statement remains complete, current and accurate, submit a serial number reference to the record and office where the prior statement is filed.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33150, July 30, 1982]

§ 3472.2-3 Signature of applicant.

(a) Every application or bid for a lease or license to mine shall be signed by the applicant or bidder or by its attorney-in-fact. If executed by an attorney-in-fact the application or bid shall be accompanied by the power of attorney and the applicant's own statement as to citizenship and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations.

(b) If the application or bid is signed by an attorney-in-fact or agent, it shall be accompanied by:

(1) A statement over the signature of the attorney-in-fact or agent; and

(2) A separate statement personally signed by the applicant or bidder stating whether there is any agreement or undertaking, written or oral, whereby the attorney-in-fact or agent has or is to receive any interest in the lease, if issued.

§ 3472.2-4 Special qualifications heirs and devisees (estates).

(a) If an applicant or bidder for a license to mine or a lease dies before the license to mine or lease is issued, the license or lease shall be issued: If the estate has not been probated, to the executor or administrator of the estate; if probate has been completed, or is not required, to the heirs or devisees; and if their are minor heirs or devisees, to their legal guardian or trustee.

(b) The lease or license to mine shall not issue until the following information has been filed:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who acts as executor or administrator has the authority to act in that capacity and to act on the application or bid;

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased applicant or bidder, and are the only heirs or devisees of the deceased; and

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings.

(2) Where the executor or administrator has been discharged or no probate proceedings are required: (i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant or bidder, and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and (ii) a statement over the signature of each of the heirs or devisees with reference to citizenship and holdings, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

§ 3472.2-5 Special qualifications, public bodies.

(a) To qualify to bid for a lease on a tract offered for sale under § 3420.1-3 of this title, a public body shall submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease;

(3) A definite plan as described in § 3420.1-3(b) to produce energy within 10 years of issuance of the prospective lease solely for its own use or for sale to its members or customers (except for short-term sales to others); and

(4) Evidence that the definite plan has been duly authorized by its governing body.

(b) To obtain a license to mine, a municipality shall submit with its application:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license to mine; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To qualify to bid for a lease on a tract of acquired land set apart for military or naval purposes, a governmental entity shall submit:

(1) Evidence of the manner in which it is organized, including the State in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its own governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased are located.

(d) If the material required in paragraphs (a), (b), or (c) of this section has previously been filed, a reference to the serial number of the record in which it has been filed, together with a statement as to any amendments shall be accepted.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33150, July 30, 1982]

Subpart 3473—Fees, Rentals, and Royalties

§ 3473.1 Payments.

§ 3473.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

[49 FR 11638, Mar. 27, 1984]

§ 3473.1-2 Where submitted.

(a)(1) All first-year rentals and the first-year portions of all bonuses for leases issued under Group 3400 of this title shall be paid to the Bureau of Land Management State office having jurisdiction over the lands (43 CFR subpart 1821).

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases shall be paid to the Service.

(b) All royalties on producing leases, all payments under leases in their minimum production period, and all advance royalties shall be paid to the Service.

[49 FR 11638, Mar. 27, 1984, as amended at 49 FR 39330, Oct. 5, 1984]

§ 3473.1-3 When paid.

First year's rental for preference right leases shall be remitted at the time of filing the applications. First year's rental for competitive leases shall be payable when required by decision. Thereafter, rental for all leases shall be paid in accordance with the lease provisions.

§ 3473.2 Fees.

§ 3473.2-1 General fee provisions.

(a) (1) A filing fee of $250.00 shall accompany each application for a lease, exploration license or lease modification.

(2) Each original application or any renewal application for a license to mine shall be accompanied by a $10.00 filing fee.

(3) A filing of fee of $50 per lease shall accompany each instrument of transfer of a lease or an interest therein.

(b) The fee shall be retained as a service charge even if the application is rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted for filing; it will be returned to the applicant without action.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33150, July 30, 1982]

§ 3473.2-2 Exemptions from fee provisions.

No filing fee is required for:

(a) An application for a license to mine filed by a relief agency as described in subpart 3440 of this title; or

(b) Preference right lease applications.

§ 3473.3 Rentals and royalties.

§ 3473.3-1 Rentals.

(a) The annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than $3. The amount of the rental will be specified in the lease.

(b) Until a lease issued before August 4, 1976, is readjusted, the rental paid for any year shall be credited against the royalties for that year.

(c) On leases issued or readjusted after August 4, 1976, rental payments shall not be credited against royalties.

(d) Rentals paid for any lease year commencing prior to the effective date of the first lease readjustment occurring after August 4, 1976, shall be credited against royalties for that year. Rentals due and payable for any lease year commencing on or after the effective date of the readjustment shall not be credited against royalties.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33150, July 30, 1982]

§ 3473.3-2 Royalties.

(a)(1) A lease shall require payment of a royalty of not less than 12½ percent of the value of the coal removed from a surface mine.

(2) A lease shall require payment of a royalty of 8 percent of the value of coal removed from an underground mine.

(3) The value of coal removed from a mine is defined for royalty purposes in § 3483.4 of this title.

(b) The royalty rates specified in paragraph (a) of this section shall be applied to new leases at the time of issuance and to previously issued leases at the time of the next scheduled readjustment of the lease.

(c) The authorized officer shall have the discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year in accordance with § 3485.2 of this title.

(d) An overriding royalty interest, production payment or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that precentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in a Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he/she shows that he/she has made substantial investments for improvements directly related to exploration, development and mining on the lands covered by the transfer that would justify a higher payment.

(e) The Secretary, whenever he/she determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms, may waive, suspend or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract or portion thereof, except that in no case shall the royalty be reduced to zero percent. An application for any of these benefits shall be filed with the authorized officer in accordance with part 3480 of this title.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982; 50 FR 8627, Mar. 4, 1985; 55 FR 2664, Jan. 26, 1990]

§ 3473.4 Suspension of operations, production, and payment obligations.

(a) Application by a lessee for relief from any operating and producing requirements of a lease; shall be filed in triplicate in the office of the Mining Supervisor in accordance with 43 CFR part 3480.

(b) The term of any lease shall be extended by adding thereto any period of suspension of all operations and production during such term in accordance with any direction or assent of the Mining Supervisor.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982]

Subpart 3474—Bonds

§ 3474.1 Bonding requirements.

(a) Before a lease may be issued, one of the following forms of lease bond shall be furnished:

(1) Corporate surety bonds;

(2) Cash bond; or

(3) Personal lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney executed on a form approved by the Director.

(b) The applicant or bidder shall file the lease bond in the proper office within 30 days of receiving notice. The lease bond shall be furnished on a form approved by the Director.

(c) The bonding obligation for a new lease may be met by an adjustment to an existing LMU bond covering the other leases within the same LMU.

[44 FR 42643, July 19, 1979, as amended at 47 FR 33151, July 30, 1982]

§ 3474.2 Type of bond required.

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease shall be furnished in the amount determined by the authorized officer. Except as provided in § 3474.3(b) of this title, that bond shall not cover reclamation within a permit area.

(b) For exploration licenses, a bond shall be furnished in accordance with § 3410.3-4 of this title.

(c)(1) Upon approval of an LMU including more than 1 Federal lease, the lessee may, in lieu of individual lease bonds, furnish and maintain an LMU bond covering all of the terms and conditions of every Federal lease within the LMU, except for reclamation within the mining permit area unless the condition in § 3474.3(b) of this title applies. All LMU bonds shall be furnished in the amount recommended by the Mining Supervisor.

(2) When an LMU is terminated, the LMU bond shall terminate. Individual leases remaining from the LMU shall be covered by lease bonds in the manner prescribed by the Mining Supervisor.

[44 FR 56340, Oct. 1, 1979, as amended at 47 FR 33151, July 30, 1982]

§ 3474.3 Bond conversions.

(a) The authorized officer shall notify those leaseholders who have nationwide or statewide bonds at the time of issuance of this subpart of the requirement to secure a separate lease bond for each lease in the amount determined by the authorized officer to be proper and necessary.

(b)(1) In setting or adjusting individual lease bond amounts, the authorized officer shall assure that the lease bond covers reclamation within a permit area where the Surface Mining Officer, because of the absence of a cooperative agreement governing Federal lands within that state, notifies the authorized officer that the lease bond should cover that reclamation.

(2) After consultation with the Surface Mining Officer, the authorized officer may release the amount of any outstanding bond which is related to, and is not necessary to secure, the performance of reclamation within a permit area.

44 FR 42643, July 19, 1979, as amended at 7 FR 33151, July 30, 1982]

3474.4 Qualified sureties.

A list of companies holding certifiates of authority from the Secretary f the Treasury under the Act of July 0, 1947 (6 U.S.C. 6-14) as acceptable ureties on Federal bonds is published nnually in the FEDERAL REGISTER.

§ 3474.5 Default.

When the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3474.6 Termination of the period of liability.

The authorized officer shall not consent to termination of the period of liability under the lease bond unless an acceptable substitute bond has been filed or until all terms and conditions of the lease have been fulfilled.

Subpart 3475—Lease Terms

§ 3475.1 Lease form.

Leases shall be issued on a standard form approved by the Director. The authorized officer may modify those provisions of the standard form which are not required by statute or regulations and may add such additional stipulations and conditions as he/she deems appropriate.

[47 FR 33151, July 30, 1982]

§ 3475.2 Duration of leases.

Leases shall be issued for a period of 20 years and so long thereafter as the condition of continued operation is met. If the condition of continued operation is not met the lease shall be cancelled as provided in § 3452.2 of this title.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33151, July 30, 1982]

§ 3475.3 Dating of leases.

(a) Leases will be dated and made effective the first day of the month following the date signed by the authorized officer. However, upon receipt of a prior written request, the authorized officer may date a lease to be effective on the first day of the month in which it is signed.

(b) Future interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33151, July 30, 1982]

§ 3475.4 Land description.

Compliance with § 3471.1 of this title is required.

[44 FR 42643, July 19, 1979. Redesignated at 47 FR 33151, July 30, 1982]

§ 3475.5 Diligent development and continued operation.

In accordance with part 3480 of this title, each lease shall require:

(a) Diligent development; and

(b) Either (1) continued operation except when operations under the lease are interrupted by strikes, the elements or casualties not attributable to the lessee, or (2) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advanced royalty.

[47 FR 33151, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

§ 3475.6 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU shall be developed and applied in accordance with § 3487.1 of this title.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with or are superseded by the requirements imposed on the LMU of which it has become a part.

(c) The holder of any lease issued or readjusted between May 7, 1976, and the effective date of this regulation, whose lease provides by its own terms that it is considered to be an LMU, may request removal of this provision from any such lease. Such request shall be submitted to the authorized officer.

[47 FR 33151, July 30, 1982, as amended at 50 FR 8627, Mar. 4, 1985]

PART 3480—COAL EXPLORATION AND MINING OPERATIONS RULES

NOTE 1: The information collection requirements contained in 43 CFR part 3480 which require the filing of forms have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. The Coal Production and Royalty Report form in 30 CFR 211.62(d)(1), U.S. Geologica Survey Form 9-373A, has been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028-0001.

The information is being collected for Federal royalty accounting purposes. The information will be used to permit accounting and auditing of royalties submitted by the operators/lessees of Federal coal leases. The obligation to respond is mandatory for all operators/lessees of Federal coal leases. For nonproducing Federal leases, the report is required on an annual basis. For producing Federal leases, the report is required monthly or quarterly as specified in the Federal lease.

The information collection requirements contained at §§ 3481.1, 3481.2, 3482.2, 3482.3, 3483.3, 3483.4, 3485.1, 3485.2, 3486.3 and 3487.1 of this title have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1028-0042. The information may be collected from some operators/lessees to either provide data so that proposed operations may be approved or to enable the monitoring of compliance with approvals already granted. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain the benefit under the Federal lease.

NOTE 2: There are many leases and agreements currently in effect, and which will remain in effect, involving Federal coal leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements also often specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager. In addition, many leases and agreements specifically refer to 30 CFR part 211 or specific sections thereof. Those references shall now be read to refer to 43 CFR part 3480 or to the appropriate redesignated section thereof.

Subpart 3480—Coal Exploration and Mining Operations Rules: General

Sec.
3480.0-1 Purpose.
3480.0-4 Scope.
3480.0-5 Definitions.
3480.0-6 Responsibilities.

Subpart 3481—General Provisions

3481.1 General obligations of the operator/lessee.
3481.2 Procedures and public participatio
3481.3 Confidentiality.

Subpart 3482—Exploration and Resource Recovery and Protection Plans

3482.1 Exploration and resource recovery and protection plans.
3482.2 Action on plans.
3482.3 Mining operations maps.

Subpart 3483—Diligence Requirements

3483.1 Diligent development and continued operation requirement.
3483.2 Termination or cancellation for failure to meet diligent development and maintain continued operation.
3483.3 Extension or suspension of continued operation, 3-year resource recovery and protection plan submission requirement, and operations and production.
3483.4 Payment of advance royalty in lieu of continued operation.
3483.5 Crediting of production toward diligent development.
3483.6 Special logical mining unit rules.

Subpart 3484—Performance Standards

3484.1 Performance standards for exploration and surface and underground mining.
3484.2 Completion of operations and permanent abandonment.

Subpart 3485—Reports, Royalties and Records

3485.1 Reports.
3485.2 Royalties.
3485.3 Maintenance of and access to records.

Subpart 3486—Inspection, Enforcement, and Appeals

3486.1 Inspections.
3486.2 Notices and orders.
3486.3 Enforcement.
3486.4 Appeals.

Subpart 3487—Logical Mining Unit

3487.1 Logical mining units.

AUTHORITY: The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a-398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 471, *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*); and the Freedom of Information Act (5 U.S.C. 552).

SOURCE: 47 FR 33179, July 30, 1982, unless otherwise noted. Redesignated at 48 FR 41589-41594, Sept. 16, 1983.

EDITORIAL NOTES:

NOTE 1: See Redesignation Table No. 5 appearing in the Finding Aids section of this volume.

NOTE 2: For nomenclature changes to this part, see 48 FR 41590-41594, Sept. 16, 1983.

Subpart 3480—Coal Exploration and Mining Operations Rules: General

§ 3480.0-1 Purpose.

The purposes of the rules of this part are to ensure orderly and efficient development, mining, preparation, and handling operations for Federal coal; ensure production practices that prevent wasting or loss of coal or other resources; avoid unnecessary damage to coal-bearing or mineral-bearing formations; ensure MER of Federal coal; ensure that operations meet requirements for diligent development and continued operation; ensure resource recovery and protection plans are submitted and approved in compliance with MLA; ensure effective and reasonable regulation of surface and underground coal mining operations; require an accurate record and accounting of all coal produced; ensure efficient, environmentally sound exploration and mining operations; and eliminate duplication of efforts by the Minerals Management Service (MMS), OSM, and the States in the Federal coal program.

§ 3480.0-4 Scope.

The rules of this part shall govern operations for the exploration, development, and production of Federal coal under Federal coal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (MLA), and in conjunction with the rules at 43 CFR Group 3400 and 30 CFR Chapter VII. Included are provisions relating to resource recovery and protection, royalties, diligent development, continued operation, maximum economic recovery (MER), and logical mining units (LMU's). Except as otherwise provided in 25 CFR Chapter I or Indian lands leases, these rules do not apply to operations on Indian lands. The provisions in these rules relating to advance royalty, diligent development, continued operation, MER, and LMU's shall not apply to Indian lands, leases and permits. The rules governing exploration licenses for unleased Federal coal are codified at 43 CFR part 3410. Until final rulemaking is promulgated and implemented by the Office of Surface Mining Reclamation and Enforcement (OSM) regarding the initial Federal lands Programs, the initial Federal lands Program rules codified at 30 CFR part 211 (1981) shall remain in effect.

§ 3480.0-5 Definitions.

(a) As used in the rules of this part, the following terms shall have the following meanings:

(1) *Advance royalty* means a payment under a Federal lease in advance of actual production when authorized by the authorized officer to be made in lieu of continued operation. Payments made under the minimum production clause, in lieu of actual production from a Federal lease issued prior to August 4, 1976, and not readjusted after August 4, 1976, are not advance royalty under the provisions at 43 CFR 3483.4

(2) *Assistant Director for Solid Leasable Minerals* means Assistant Director for Solid Leasable Minerals, Bureau of Land Management;

(3) *Assistant Secretary for Land and Water Resources* means the Assistant Secretary for Land and Water Resources, Department of the Interior;

(4) *Chief, Division of Solid Mineral Operations* means the Chief, Division of Solid Minerals Operations, Bureau of Land Management;

(5) *Coal reserve base* shall be determined using existing published or unpublished information, or any combination thereof, and means the estimated tons of Federal coal in place contained in beds of:

(i) Metallurgical or metallurgical-blend coal 12 inches or more thick; anthracite, semianthracite, bituminous, and subbituminous coal 28 inches or more thick; and lignite 60 inches or more thick to a depth of 500 feet below the lowest surface elevation on the Federal lease.

(ii) Metallurgical and metallurgical-blend coal 24 inches or more thick; anthracite, semianthracite, bituminous and subbituminous coal 48 inches or more thick; and lignite 84 inches or more thick occurring from 500 to 3,000 feet below the lowest surface elevation on the Federal lease.

(iii) Any thinner bed of metallurgical, anthracite, semianthracite, bituminous, and subbituminous coal and lignite at any horizon above 3,000 feet below the lowest suface elevation on the Federal lease, which is currently being mined or for which there is evidence that such coal bed could be mined commercially at this time.

(iv) Any coal at a depth greater than 3,000 feet where mining actually is to occur.

(6) *Commercial quantities* means 1 percent of the recoverable coal reserves or LMU recoverable coal reserves.

(7) *Contiguous* means having at least one point in common, including cornering tracts. Intervening physical separations such as burn or outcrop lines and intervening legal separations such as rights-of-way do not destroy contiguity as long as legal subdivisions have at least one point in common.

(8) *Continued operation* means the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

(9) *Continued operation year* means the 12-month period beginning with the commencement of the first royalty reporting period following the date that diligent development is achieved and each 12-month period thereafter.

except as suspended in accordance with 43 FR 3483.3(b).

(10) *Deputy Director for Energy and Mineral Resources* means the Deputy Director for Energy and Mineral Resources, Bureau of Land Management;

(11) *Development* means activities conducted by an operator/lessee, after approval of a permit application package, to prepare a mine for commercial production.

(12) *Diligent development* means the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period.

(13) *Diligent development period* means a 10-year period which:

(i) For Federal leases shall begin on either—

(A) The effective date of the Federal lease for all Federal leases issued after August 4, 1976; or

(B) The effective date of the first lease readjustment after August 4, 1976, for Federal leases issued prior to August 4, 1976; and

(ii) For LMU's shall begin on either—

(A) The effective approval date of the LMU, if the LMU contains a Federal lease issued prior to August 4, 1976, but not readjusted after August 4, 1976, prior to LMU approval; or

(B) The effective date of the most recent Federal lease issuance or readjustment prior to LMU approval, for any LMU that does not contain a lease issued prior to August 4, 1976, that has not been readjusted after August 4, 1976, prior to LMU approval.

The diligent development period shall terminate at the end of the royalty reporting period in which the production of recoverable coal reserves in commercial quantities was achieved, or at the end of 10 years, whichever occurs first.

(14) *Exploration* means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of Federal coal and its environment including the strata below the Federal coal, overburden, and strata above the Federal coal, and the hydrologic conditions associated with the Federal coal.

(15) *Exploration plan* means a detailed plan to conduct exploration; it shows the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

(16) *General mining order* means any numbered formal order, issued by the State Director, which is published in the FEDERAL REGISTER after opportunity for public comment. General Mining Orders apply to coal exploration, mining, and related operations.

(17) *Gross value,* for the purpose of royalty calculations, means the unit sale or contract price times the number of units sold, subject to the provisions at § 3485.2(g) of this title under which gross value is determined.

(18) *License* means a license to mine coal pursuant to the provisions of 43 CFR part 3440, or an exploration license issued pursuant to the provisions of 43 CFR part 3410.

(19) *Logical mining unit (LMU)* means an area of land in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to conservation of recoverable coal reserves and other resources. An LMU may consist of one or more Federal leases and may include intervening or adjacent lands in which the United States does not own the coal. All lands in an LMU shall be under the effective control of a single operator/lessee, be able to be developed and operated as a single operation, and be contiguous.

(20) *Logical mining unit (LMU) recoverable coal reserves* means the sum of estimated Federal and non-Federal recoverable coal reserves in the LMU.

(21) *Maximum economic recovery (MER)* means that, based on standard industry operating practices, all profitable portions of a leased Federal coal deposit must be mined. At the times of MER determinations, consideration will be given to: existing proven technology; commercially available and economically feasible equipment; coal quality, quantity, and marketability; safety, exploration, operating, processing, and transportation costs; and compliance with applicable laws and regu-

lations. The requirement of MER does not restrict the authority of the authorized officer to ensure the conservation of the recoverable coal reserves and other resources and to prevent the wasting of coal.

(22) *Methods of operation* means the methods and manner, described in an exploration or resource recovery and protection plan, by which exploration, development, or mining activities are to be performed by the operator/lessee.

(23) *Minable reserve base* means that portion of the coal reserve base which is commercially minable and includes all coal that will be left, such as in pillars, fenders, or property barriers. Other areas where mining is not permissible (including, but not limited to, areas classified as unsuitable for coal mining operations) shall be excluded from the minable reserve base.

(24) *Mine* means an underground or surface excavation or series of excavations and the surface or underground support facilities that contribute directly or indirectly to mining, production, preparation, and handling of coal.

(25) *MLA* means the Act of February 25, 1920, as amended, commonly referred to as the Mineral Leasing Act and codified at 30 U.S.C. 181, *et seq.*, and the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. 351-359.

(26) *Notice of availability* means formal notification by the authorized officer to: appropriate Federal, State, and local government agencies; to the surface and mineral owners; and to the public in accordance with 43 CFR 3481.2.

(27) *Operator/lessee* means lessee, licensee, and/or one conducting operations on a Federal lease or license under a written contract or written agreement with the lessee or licensee.

(28) *Permanent abandonment of exploration operations* means the completion of all activities conducted under an approved exploration plan, including plugging of all drill holes, submission of required records, and reclamation of all disturbed surfaces.

(29) *Permanent abandonment of mining operations* means the completion of all development, production, and resource recovery and protection requirements conducted under an approved resource recovery and protection plan, including satisfaction of all Federal rental and royalty requirements.

(30) *Preparation* means any physical or chemical treatment to prepare coal for market. Treatment may include crushing, sizing, drying, mixing, or other processing, and removal of noncoal waste such as bone or other impurities to enhance the quality and therefore the value of the coal.

(31) *Production* means mining of recoverable coal reserves and/or commercial byproducts from a mine using surface, underground, auger, or *in situ* methods.

(32) *Recoverable coal reserves* means the minable reserve base excluding all coal that will be left, such as in pillars, fenders, and property barriers.

(33) *Resource recovery and protection* includes practices to: recover efficiently the recoverable coal reserves subject to these rules; avoid wasting or loss of coal or other resources; prevent damage to or degradation of coal-bearing or mineral-bearing formations; ensure MER of the Federal coal; and ensure that other resources are protected during exploration, development, and mining, and upon abandonment.

(34) *Resource recovery and protection plan* means a plan showing that the proposed operation meets the requirements of MLA for development, production, resource recovery and protection, diligent development, continued operation, MER, and the rules of this part for the life-of-the-mine.

(35) *State Director* means an employee of the Bureau of Land Management who has been designated as the chief administrative officer of one of the Bureau's 12 administrative areas designated as "States".

(36) *Subsidence* means a lowering of surface elevations over an underground mine caused by loss of support and subsequent settling or caving of strata lying above the mine.

(b) The following shall have the meanings as defined at 30 CFR Chapter VII:

Alluvial valley floors

Federal Lands Program
Ground water
Indian lands
Overburden
Permit
Permit application
Permit application package
Permit area
Regulatory authority
Roads
Spoil

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

§ 3480.0-6 Responsibilities.

(a) *Responsibilities of other Federal Agencies*—(1) *Office of Surface Mining Reclamation and Enforcement.* The responsibility for administration of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 U.S.C. 1201, *et seq.*) is vested in OSM.

(2) *Mine Safety and Health Administration.* The responsibility for enforcement of the Federal Coal Mine Health and Safety Act of 1969, as amended (83 Stat. 742), and the coal mine health and safety rules contained in Chapter I of this title are vested in the Mine Safety and Health Administration, Department of Labor.

(3) *Bureau of Land Management.* The responsibility for the issuance of exploration licenses for unleased Federal coal, the issuance of licenses to mine, and the issuance, readjustment, modification, termination, cancellation, and/or approval of transfers of Federal coal leases pursuant to MLA, as amended, is vested in the Bureau of Land Management.

(b) The BLM has the general responsibility to administer MLA with respect to coal mining, production, and resource recovery and protection operations on Federal coal leases and licenses, and to supervise exploration operations for Federal coal.

(c) Subject to the supervisory authority of the Secretary, the rules of this part shall be administered by BLM through the Director; Deputy Director for Energy and Mineral Resources; Chief, Division of Solid Mineral Operations; State Director and authorized officer.

(d) The authorized officer is empowered to oversee exploration, development, production, resource recovery and protection, diligent development, continued operation, preparation, handling, product verification, and abandonment operations subject to the rules of this part, and shall be responsible for the following:

(1) *Exploration plans.* Approve, disapprove, approve upon condition(s), or require modification to exploration plans for Federal coal.

(2) *Resource recovery and protection plans.* Recommend to the Assistant Secretary for Energy and Minerals the approval, disapproval, or approval upon condition(s) of resource recovery and protection plans.

(3) *LMU applications.* Approve, disapprove, or approve upon condition(s) LMU applications or modifications thereto; direct the establishment of LMU's in the interest of conservation of recoverable coal reserves and other resources; conduct public hearings on LMU applications, as appropriate, recommend amendments to Federal lease terms when determined necessary to ensure consistency with LMU stipulations; monitor and ensure compliance with LMU stipulations and the rules of this part; and require reports and information for the establishment of an LMU.

(4) *Inspection of operations.* Examine as frequently as necessary, but at least quarterly, federally leased or licensed lands where operations for exploration, development, production, preparation, and handling of coal are conducted or are to be conducted; inspect such operations for product verification, resource recovery and protection, MER, diligent development and continued operation; inspect such operations for the purpose of determining whether wasting or degradation of other resources or damage to formations and deposits or nonmineral resources affected by the operations is being avoided or minimized; and determine whether there is compliance with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses, and all requirements of approved exploration or resource recovery and protection plans.

(5) *Compliance.* Require operators/lessees to conduct operations subject to the rules of this part in compliance

with all provisions of applicable laws, rules, and orders, all terms and conditions of Federal leases and licenses under MLA requirements, and approved exploration or resource recovery and protection plans for requirements of production, development, resource recovery and protection, MER, diligent development and continued operation upon commencement of production.

(6) *Waiver, suspension, or reduction of rentals, or reduction of royalties.* Receive and act on applications for waiver, suspension, or reduction of rentals, and receive and act on applications for reduction of royalties, but not advance royalty, filed pursuant to the rules of this part.

(7) *Extensions or suspensions.* Receive and act on applications for extensions or suspensions filed in accordance with 43 CFR 3483.2 and, when appropriate, terminate extensions or suspensions that have been granted, provided that approval of an extension or a suspension shall not preclude the regulatory authority from requiring the operator/lessee to continue to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(8) *Cessation and abandonment.* Upon receipt of notice of proposed abandonment or upon relinquishment of a Federal lease, in accordance with 43 CFR 3452.1-2, or Federal license, in accordance with 43 CFR 3410.3-1(d), the authorized officer shall conduct an inspection to determine whether the applicable exploration, development, production, resource recovery and protection, and abandonment requirements of the Federal lease or license have been met. Relinquishment or abandonment of a Federal lease shall not preclude the regulatory authority from requiring the operator/lessee to comply with the reclamation requirements of 30 CFR Chapter VII, Subchapter K, or an approved State program.

(9) *Exploration drill holes.* Prescribe or approve the methods for protecting coal-bearing formations from damage or contamination that might occur as a result of any holes drilled to, or through, the coal-bearing formations for any purpose under an approved exploration plan.

(10) *Trespass.* Report to the responsible officer of the surface managing agency, with a copy to the regulatory authority, any trespass on Federal lands that involves exploration activities or removal of unleased Federal coal, determine the quantity and quality of coal removed, and recommend the amount of trespass damages.

(11) *Water and air quality.* Inspect exploration operations to determine compliance with air and surface and ground water pollution control measures required by Federal statutes as implemented by the terms and conditions of applicable Federal leases, licenses or approved exploration plans and promptly notify appropriate representatives of the regulatory authority and Federal Agencies in the event of any noncompliance.

(12) *Implementation of rules.* Issue General Mining Orders and other orders for enforcement, make determinations, and grant consents and approvals as necessary to implement or ensure compliance with the rules of this part. Any oral orders, approvals, or consents shall be promptly confirmed in writing.

(13) *Lease bonds.* (i) Determine whether the total amount of Federal lease bond with respect to operations under the rules of this part is adequate at all times to satisfy the reclamation requirements of the exploration plan.

(ii) Determine whether the total amount of any bond furnished with respect to operations subject to the rules of this part is at all times adequate to satisfy the requirements of the Federal lease or license relating to exploration, development, production, resource recovery and protection, and shall determine if the bond amount is adequate to satisfy any payments of rentals on producing Federal leases and payments of Federal royalties.

(iii) Notify the responsible officer of the surface managing agency of determinations under (c)(13) (i) and (ii) of this section.

[47 FR 33179, July 30, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

Subpart 3481—General Provisions

§ 3481.1 General obligations of the operator/lessee.

(a) The operator/lessee shall conduct exploration activities, reclamation, and abandonment of exploration operations for Federal coal pursuant to the performance standards of the rules of this part, applicable requirements of 30 CFR 815.15 (OSM permanent performance standards for coal exploration) or an approved State program, any Federal lease or license terms and/or conditions, the requirements of the approved exploration plan, and orders issued by the authorized officer.

(b) The operator/lessee shall conduct surface and underground coal mining operations involving development, production, resource recovery and protection, and preparation and handling of coal in accordance with the rules of this part, terms and conditions of the Federal leases or licenses, the approved resource recovery and protection plan, and any orders issued by the authorized officer.

(c) The operator/lessee shall prevent wasting of coal and other resources during exploration, development, and production and shall adequately protect the recoverable coal reserves and other resources upon abandonment.

(d) The operator/lessee shall immediately report to the authorized officer any conditions or accidents causing severe injury or loss of life that could affect mining operations conducted under the resource recovery and protection plan or threaten significant loss of recoverable coal reserves or damage to the mine, the lands, or other resources, including, but not limited to, fires, bumps, squeezes, highwall caving, landslides, inundation of mine with water, and gas outbursts, including corrective action initiated or recommended. Within 30 days after such accident, the operator/lessee shall submit a detailed report of damage caused by such accident and of the corrective action taken.

(e) The principal point of contact for the operator/lessee with respect to any requirement of the rules of this part shall be the authorized officer. All reports, plans, or other information required by the rules of this part shall be submitted to the authorized officer.

(f) The operator/lessee shall provide the authorized officer free access to the Federal premises.

[47 FR 33179, July 30, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

§ 3481.2 Procedures and public participation.

(a) *Written findings.* All major decisions and determinations of the State Director and District Manager shall be in writing; shall set forth with reasonable detail the facts and rationale upon which such decisions or determinations are based; and shall be available for public inspection, pursuant to § 3481.3 of this title, during normal business hours at the appropriate office.

(b) *Logical mining units (LMU's)*—(1) *Availability of LMU proposals.* Applications for the approval of an LMU or modification thereto submitted under § 3487.1 of this title, or a proposal by the authorized officer to establish an LMU, shall be available for public inspection, pursuant to § 3481.3 of this title, in the office of the authorized officer. A notice of the availability of any proposed LMU or modification thereto shall be prepared immediately by the authorized officer, promptly posted at his office, and mailed to the surface and coal owners, if other than the United States; appropriate State and Federal Agencies; and the clerk or other appropriate officer of the county in which the proposed LMU is located. The notice will be posted or published in accordance with the procedures of such offices. The notice shall be submitted by the authorized officer to a local newspaper of general circulation in the locality of the proposed LMU for publication at least once a week for 2 weeks consecutively.

(2) *Notice of proposed decision.* Prior to the final approval or establishment of any LMU, the authorized officer shall have the proposed decision published in a local newspaper of general circulation in the locality of the proposed LMU at least once a

week for 2 weeks consecutively and shall not approve the application for at least 30 days after the first publication of the proposed decision. Such notice may be published concurrently with the notice of availability.

(3) *Public participation.* A public hearing shall be conducted upon the receipt by the authorized officer of a written request for a hearing from any person having a direct interest which is or may be affected adversely by approval of the proposed LMU, provided that the written request is received within 30 days after the first publication of the notice of proposed decision in a newspaper of general circulation in the locality of the proposed LMU. A complete transcript of any such public hearing, including any written comments submitted for the record, shall be kept and made available to the public during normal business hours at the office of the authorized officer that held the hearing, and shall be furnished at cost to any interested party. In making any decision or taking any action subsequent to such public hearing, the authorized officer shall take into account all testimony presented at the public hearing.

§ 3481.3 Confidentiality.

(a) Information on file with MMS obtained pursuant to the rules of this part or part 3400 of this title shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR part 2, except that:

(1) Information such as geologic and geophysical data and maps pertaining to Federal recoverable coal reserves obtained from exploration licensees under the rules of this part or part 3410 of this title shall not be disclosed except as provided in 43 CFR 2.20(c).

(2) Information obtained from an operator/lessee under the rules of this part that constitutes trade secrets and commercial or financial information which is privileged or confidential or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data and maps, shall not be available for public inspection or made public or disclosed without the consent of the operator/lessee.

(3) Upon termination of a Federal lease, such geologic and geophysical data and maps shall be made available to the public.

(4) Upon issuance or readjustment of a Federal lease, the estimated Federal recoverable coal reserves figure shall not be made available to the public unless such a release has been included as a Federal lease term.

(b) Information requested by the operator/lessee to be kept confidential under this section shall be clearly marked "CONFIDENTIAL INFORMATION." All pages so marked shall be physically separated from other portions of the submitted materials. All information not marked "CONFIDENTIAL INFORMATION" will be available for public inspection, except as stated at paragraph (a) of this section for data submitted prior to August 30, 1982.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated and amended at 48 FR 41589, 41590, Sept. 16, 1983]

Subpart 3482—Exploration and Resource Recovery and Protection Plans

§ 3482.1 Exploration and resource recovery and protection plans.

(a) *Exploration plans.* For background and application procedures for exploration licenses for unleased Federal coal, see 43 CFR part 3410. For background and application procedures for exploration for Federal coal within an approved permit area after mining operations have commenced, see 30 CFR Chapter VII. For any other exploration for Federal coal prior to commencement of mining operations, the following rules apply:

(1) Except for casual use, before conducting any exploration operations on federally leased or licensed lands, the operator/lessee shall submit an exploration plan to and obtain approval from the authorized officer. Casual use, as used in this paragraph, means activities which do not cause appreciable surface distrubance or damage to lands or other resources and improvements. Casual use does not include use

of heavy equipment or explosives or vehicular movement off established roads and trails.

(2) The operator/lessee shall submit five copies of exploration plans to the authorized officer. Exploration plans shall be consistent with and responsive to the requirements of the Federal lease or license for the protection of recoverable coal reserves and other resources and for the reclamation of the surface of the lands affected by the operations. The exploration plan shall show that reclamation is an integral part of the proposed operations and that reclamation will progress as contemporaneously as practicable with such operations.

(3) Exploration plans shall contain all of the following:

(i) The name, address, and telephone number of the applicant, and, if applicable, the operator/lessee of record.

(ii) The name, address, and telephone number of the representative of the applicant who will be present during and be responsible for conducting the exploration.

(iii) A narrative description of the proposed exploration area, cross-referenced to the map required under paragraph (a)(3)(viii) of this section, including applicable Federal lease and license serial numbers; surface topography; geologic, surface water, and other physical features; vegetative cover; endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*); districts, sites, buildings, structures, or objects listed on, or eligible for listing on, the National Register of Historic Places; and known cultural or archeological resources located within the proposed exploration area.

(iv) A narrative description of the methods to be used to conduct coal exploration, reclamation, and abandonment of operations including, but not limited to—

(A) The types, sizes, numbers, capacity, and uses of equipment for drilling and blasting, and road or other access route construction;

(B) Excavated earth- or debris-disposal activities;

(C) The proposed method for plugging drill holes;

(D) Estimated size and depth of drill holes, trenches, and test pits; and,

(E) Plans for transfer and modification of exploration drill holes to be used as surveillance, monitoring, or water wells.

(v) An estimated timetable for conducting and completing each phase of the exploration, drilling, and reclamation.

(vi) The estimated amounts of coal to be removed during exploration, a description of the method to be used to determine those amounts, and the proposed use of the coal removed.

(vii) A description of the measures to be used during exploration for Federal coal to comply with the performance standards for exploration (§ 3484.1(a) of this title) and applicable requirements of 30 CFR 815.15 or an approved State program.

(viii) A map at a scale of 1:24,000 or larger showing the areas of land to be affected by the proposed exploration and reclamation. The map shall show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; applicable Federal lease and license boundaries; the location of land excavations to be conducted; coal exploratory holes to be drilled or altered; earth- or debris-disposal areas; existing bodies of surface water; and topographic and drainage features.

(ix) The name and address of the owner of record of the surface land, if other than the United States. If the surface is owned by a person other than the applicant or if the Federal coal is leased to a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(x) Such other data as may be required by the authorized officer.

(b) *Resource recovery and protection plans.* Before conducting any Federal coal development or mining operations on Federal leases or licenses, the operator/lessee shall submit and obtain approval of a resource recovery and protection plan, unless a current resource recovery and protection plan has been approved prior to August 30, 1982. If the resource recovery and protection plan is submitted solely to meet the MLA 3-year submittal requirement, the resource recovery and protection plan shall be submitted to the authorized officer. Upon receipt of a resource recovery and protection plan, the authorized officer will review such plan for completeness and for compliance with MLA. Prior to commencement of any coal development or mining operations on a Federal lease or license, a permit application package containing, among other documents, a resource recovery and protection plan and a permit application shall be submitted to the regulatory authority. On any Federal lease issued after August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the Federal lease. On any Federal lease issued prior to August 4, 1976, MLA requires that a resource recovery and protection plan shall be submitted no later than 3 years after the effective date of the first lease readjustment after August 4, 1976, or the effective date of the operator/lessee's election provided for at § 3483.1(b)(1) of this title, unless a current resource recovery and protection plan has been approved. Any resource recovery and protection plan submitted but not approved as of August 30, 1982, shall be revised to comply with these rules. A resource recovery and protection plan for an LMU shall be submitted to the authorized officer as provided in § 3487.1(e)(1) of this title.

(c) The authorized officer may contact directly operators/lessees regarding MLA requirements. The resource recovery and protection plan shall contain all the requirements pursuant to MLA for the life-of-the-mine and, unless previously submitted in an LMU application or as directed by the authorized officer, shall include all of the following:

(1) Names, addresses, and telephone numbers of persons responsible for operations to be conducted under the approved plan to whom notices and orders are to be delivered; names and addresses of operators/lessees; Federal lease serial numbers; Federal license serial numbers, if appropriate; and names and addresses of surface and subsurface coal or other mineral owners of record, if other than the United States.

(2) A general description of geologic conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted.

(3) A description of the proposed mining operation, including:

(i) Sufficient coal analyses to determine the quality of the minable reserve base in terms including, but not limited to, Btu content on an as-received basis, ash, moisture, sulphur, volatile matter, and fixed carbon content.

(ii) The methods of mining and/or variation of methods, basic mining equipment and mining factors including, but not limited to, mining sequence, production rate, estimated recovery factors, stripping ratios, highwall limits, and number of acres to be affected.

(iii) An estimate of the coal reserve base, minable reserve base, and recoverable coal reserves for each Federal lease included in the resource recovery and protection plan. If the resource recovery and protection plan covers an LMU, recoverable coal reserves will also be reported for the non-Federal lands included in the resource recovery and protection plan.

(iv) The method of abandonment of operations proposed to protect the unmined recoverable coal reserves and other resources.

(4) Maps and cross sections, as follows:

(i) A plan map of the area to be mined showing the following—

(A) Federal lease boundaries and serial numbers;

(B) LMU boundaries, if applicable;

(C) Surface improvements, and surface ownership and boundaries;

(D) Coal outcrop showing dips and strikes; and,

(E) Locations of existing and abandoned surface and underground mines.

(ii) Isopach maps of each coal bed to be mined and the overburden and interburden.

(iii) Typical structure cross sections showing all coal contained in the coal reserve base.

(iv) General layout of proposed surface or strip mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location and width of coal fenders; and,

(C) Cross sections of typical pits showing highwall and spoil configuration, fenders, if any, and coal beds.

(v) General layout of proposed underground mine showing—

(A) Planned sequence of mining by year for the first 5 years, thereafter in 5-year increments for the remainder of mine life;

(B) Location of shafts, slopes, main development entries and barrier pillars, panel development, bleeder entries, and permanent barrier pillars;

(C) Location of areas where pillars will be left and an explanation why these pillars will not be mined;

(D) A sketch of a typical entry system for main development and panel development entries showing centerline distances between entries and crosscuts;

(E) A sketch of typical panel recovery (e.g., room and pillar, longwall, or other mining method) showing, by numbering such mining, the sequence of development and retreat; and,

(vi) For auger mining—

(A) A plan map showing the area to be auger mined and location of pillars to be left to allow access to deeper coal;

(B) A sketch showing details of operations including coal bed thickness, auger hole spacing, diameter of holes and depth or length of auger holes.

(5) A general reclamation schedule for the life-of-the-mine. This should not be construed as meaning duplication of a permit application in a permit application package under SMCRA. The resource recovery and protection plan may cross-reference, as appropriate, a permit application submitted under SMCRA to fulfill this requirement.

(6) Any required data which are clearly duplicated in other submittals to the regulatory authority or Mine Safety and Health Administration may be used to fulfill the requirements of the above paragraphs provided that the cross-reference is clearly stated. A copy of the relevant portion of such submittals must be included in the resource recovery and protection plan.

(7) Explanation of how MER of the Federal coal will be achieved for the Federal coal leases included in the resource recovery and protection plan. If a coal bed, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

§ 3482.2 Action on plans.

(a)(1) *Exploration plans.* The authorized officer after evaluating a proposed exploration plan and all comments received thereon, and after consultation with the responsible officer of the surface managing agency, and with the regulatory authority when exploration is to be conducted within an approved permit area prior to commencement of mining operations, shall promptly approve or disapprove in writing an exploration plan. In approving an exploration plan, the authorized officer shall determine that the exploration plan complies with the rules of this part, applicable requirements of 30 CFR 815.15 or an approved State program, and any Federal lease or license terms and/or conditions. Reclamation must be accomplished as set forth in the exploration plan. The authorized officer may impose additional conditions to conform to the rules of this part. In disapproving an exploration plan, the authorized officer shall state what modifications, if any, are necessary to achieve such conformity. No exploration plan shall be approved unless the bond, executed pursuant to the provisions of 43 CFR part 3474 or 43 CFR part 3410, has been determined by the responsible officer of the surface managing agency to be adequate. When the land involved in the exploration plan is under the surface management jurisdiction of an agency other than DOI, that other agency must concur with the approval terms of the exploration plan.

(2) *Resource recovery and protection plans.* No resource recovery and protection plan or modification thereto shall be approved which is not in conformance with the rules of this part, any Federal lease or license terms and/or conditions, and is not found to achieve MER of the Federal coal within an LMU or Federal lease issued or readjusted after August 4, 1976. The determination of MER shall be made by the authorized officer based on review of the resource recovery and protection plan. No resource recovery and protection plan shall be approved prior to the filing of a complete permit application package and unless the Federal lease bond, executed pursuant to the provisions of 43 CFR part 3474 has been determined by the authorized officer to be adequate.

(3) *Recoverable coal reserves estimates.* For all Federal coal leases issued or readjusted after August 4, 1976, the recoverable coal reserves or LMU recoverable coal reserves shall be those estimated by the authorized officer as of the date of approval of the resource recovery and protection plan, or the date of approval of any existing mining plan as defined at 30 CFR 740.5 (1981). If an operator/lessee credits production toward diligent development in accordance with § 3483.5 of this title, such credits shall be included in the recoverable coal reserves or LMU recoverable coal reserves estimates. The estimate of recoverable coal reserves or LMU recoverable coal reserves may only be revised as new information becomes available. Estimates of recoverable coal reserves or LMU recoverable coal reserves shall not be reduced due to any production after the original estimate made by the authorized officer.

(b) *Changes in plans by authorized officer.* (1) Approved exploration plans may be required to be revised or supplemented at any time by the authorized officer, after consultation with the operator/lessee and the responsible officer of the surface managing agency as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements.

(2) The authorized officer, pursuant to MLA, may require approved resource recovery and protection plans to be revised or supplemented reasonably for modifications, after consultation with the operator/lessee and the regulatory authority as necessary, to adjust to changed conditions, to correct oversights, or to reflect changes in legal requirements. Such revisions shall be made in writing, as appropriate, and the authorized officer shall submit a copy to the regulatory authority.

(c) *Changes in plans by operator/lessee.* (1) The operator/lessee may propose modifications to an approved exploration plan and shall submit a written statement of the proposed change and its justification to the authorized officer. The authorized officer shall promptly approve or disapprove in writing any such modifications, after consultation with the responsible officer of the managing agency and the regulatory authority as necessary, or specify conditions under which they would be acceptable.

(2) The operator/lessee may propose modifications to an approved resource recovery and protection plan for any requirements under MLA, and shall submit a written statement of the proposed change and its justification to the authorized officer. The authorized officer shall promptly approve or disapprove in writing any such modifications, after consultation with the regulatory authority as necessary, or specify conditions under which they would be acceptable. Upon approval of modifications, the authorized officer shall submit a copy to the regulatory authority.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

§ 3482.3 Mining operations maps.

(a) *General requirements.* Upon commencement of mining operations, the operator/lessee shall maintain accurate and up-to-date maps of the mine drawn to scales acceptable to the authorized officer. Before a mine or section of a mine is abandoned, closed, or made inaccessible, a survey of the mine or section shall be made by the operator/lessee and recorded on such maps. All excavations in each separate coal bed shall be shown in such a manner that the production of coal for any royalty reporting period can be accurately ascertained. Additionally, the maps shall show the name of the mine; name of the operator/lessee; Federal lease or license serial number(s); permit number; Federal lease and permit boundary lines; surface buildings; dip of the coal bed(s); true north; map scale; map explanation; location, diameter, and depth of auger holes; improvements; topography, including subsidence resulting from mining; geologic conditions as determined from outcrops, drill holes, exploration, or mining; any unusual geologic or other occurrences such as dikes, faults, splits, unusual water occurrences, or other conditions that may influence MER; and other information that the authorized officer may request. Copies of such maps shall be properly posted to date and furnished, in duplicate, to the authorized officer annually, or at such other times as the authorized officer requests. Copies of any maps, normally submitted to the regulatory authority, Mine Safety and Health Administration, or other State or Federal Agencies, that show all of the specific data required by this paragraph or paragraphs (b), (c), and (d) of this section shall be acceptable in fulfilling these requirements.

(b) *Underground mine maps.* Underground mine maps, in addition to the general requirements of paragraph (a) of this section, shall show all mine workings; the date of extension of the mine workings; an illustrative coal section at the face of each working unit; location of all surface mine fans; ventilation stoppings, doors, overcasts, undercasts, permanent seals, and regulators; direction of the ventilating current in the various parts of the mine at the time of making the latest surveys; sealed areas; known bodies of standing water in other mine workings, either in, above, or below the active workings of the mine; areas affected by squeezes; elevations of surface and underground levels of all shafts, slopes, or drifts, and elevation of the floor, bottom of the mine workings, or mine survey stations in the roof at regular intervals in main entries, panels, or sections; and sump areas. Any maps submitted to the regulatory authority to be used to monitor subsidence shall also be submitted to the authorized officer.

(c) *Surface mine maps.* Surface mine maps, in addition to the general requirements of paragraph (a) of this section, shall include the date of extension of the mine workings and a detailed stratigraphic section at intervals specified in the approved resource recovery and protection plan. Such maps shall show areas from which coal has been removed; the highwall; fenders; uncovered, but unmined, coal beds; and elevation of the top of the coal beds.

(d) *Vertical projections and cross sections of mine workings.* When required by the authorized officer, vertical projections and cross sections shall accompany plan views.

(e) *Accuracy of maps.* The accuracy of maps furnished shall meet standards acceptable to the authorized officer and shall be certified by a professional engineer, professional land surveyor, or other such professionally qualified person.

(f) *Liability of operator/lessee for expense of survey.* If the operator/lessee fails to furnish a required or requested map within a reasonable time, the authorized officer, if necessary, shall employ a professionally qualified person to make the required survey and map, the cost of which shall be charged to, and promptly paid by, the operator/lessee.

(g) *Incorrect maps.* If any map submitted by an operator/lessee is believed to be incorrect, and the operator/lessee cannot verify the map or supply a corrected map, the authorized officer may employ a professionally qualified person to make a survey and any necessary maps. If the survey shows the maps submitted by the operator/lessee to be substantially incorrect, in whole or in part, the cost of making the survey and preparing the maps shall be charged to, and promptly paid by, the operator/lessee.

Subpart 3483—Diligence Requirements

§ 3483.1 Diligent development and continued operation requirement.

(a) *General requirements.* (1) Except as provided at paragraph (b) of this section, each Federal coal lease and LMU is required to achieve diligent development.

(2) Once the operator/lessee of a Federal coal lease or LMU has achieved diligent development, the operator/lessee shall maintain continued operation on the Federal lease or LMU for every continued operation year thereafter, except as provided in § 3483.3 of this title.

(b) Federal coal leases issued prior to August 4, 1976, until the first readjustment of the lease after August 4, 1976, shall be subject to the Federal lease terms, including those that describe the minimum production requirement, except that:

(1) An operator/lessee holding such a lease may elect to be subject to the rules of this part by notifying the authorized officer in writing prior to August 30, 1983.

(i) Such election shall consist of a written request, in triplicate, to the authorized officer that a Federal lease(s) be subject to the rules of this part, and shall contain the following—

(A) Name and address of the operator/lessee of record.

(B) Federal lease number(s).

(C) Certified record of annual Federal coal production since August 4, 1976, for the Federal lease(s) that the operator/lessee requests to have credited toward diligent development in accordance with § 3483.5 of this title.

(ii) Upon verification by the authorized officer of the reported annual Federal coal production, the authorized officer shall notify the operator/lessee by certified mail, return receipt requested, that the election has been approved. The effective date of the election shall be the most recent royalty reporting period prior to the submittal of the election to the authorized officer.

(2) Upon the effective date of the first lease readjustment after August 4, 1976, all such Federal leases shall be subject to the rules of this part.

(c) Any Federal coal lease included in an LMU shall be subject to the diligent development and continued operation requirements imposed on the LMU in lieu of those diligent development and continued operation requirements that would apply to the Federal lease individually.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

§ 3483.2 Termination or cancellation for failure to meet diligent development and maintain continued operation.

(a) Any Federal coal lease or LMU which has not achieved diligent development shall be terminated by DOI.

(b) After an LMU has been terminated under the provision of paragraph (a) of this section, any Federal coal lease included in that LMU shall then be subject to the diligent development and continued operation requirements that would have been imposed on that Federal lease by the rules of this part, as if the Federal lease had not been included in the LMU.

(c) Any Federal coal lease on which continued operation is not maintained shall be subject to cancellation.

(d) The DOI may cancel any Federal coal lease or LMU which fails to meet the requirement for submission of a resource recovery and protection plan.

§ 3483.3 Extension or suspension of continued operation, 3-year resource recovery and protection plan submission requirement, and operations and production.

(a) Applications for extensions or suspensions of continued operation or 3-year resource recovery and protection plan submittals shall be filed in triplicate in the office of the authorized officer. The authorized officer, if he determines the application to be in the public interest, is authorized to act on such applications, and to terminate extensions or suspensions which have been or may be granted.

(1) The requirement for continued operation shall be suspended and the date by which a resource recovery and protection plan must be submitted shall be extended by the period of time in which the authorized officer

determines that operations under the Federal coal lease or LMU are interrupted by strikes, the elements, or casualties not attributable to the operator/lessee.

(2) The authorized officer may suspend the requirement for continued operation upon the payment of advance royalty in accordance with § 3481.0-6 of this title for any operation. The authorized officer, upon notifying the operator/lessee 6 months in advance, may cease to accept advance royalty in lieu of the requirement for continued operation.

(b) In the interest of conservation, the authorized officer is authorized to act on applications for suspension of operations and production filed pursuant to paragraph (b) of this section, direct suspension of operations and production and terminate such suspensions which have been or may be granted. Applications by an operator/lessee for relief from any operations and production requirements of a Federal lease shall contain justification for the suspension and shall be filed in triplicate in the office of the authorized officer.

(1) A suspension in accordance with paragraph (b) of this section shall take effect as of the time specified by the authorized officer. Any such suspension of a Federal coal lease or LMU approved by the authorized officer also suspends all other terms and conditions of the Federal coal lease or LMU, for the entire period of such a suspension. Rental and royalty payments will be suspended during the period of such suspension of all operations and production, beginning with the first day of the Federal lease month on which the suspension of operations and production becomes effective. Rental and royalty payments shall resume on the first day of the Federal lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty on producing Federal leases due under the Federal lease.

(2) The minimum annual production requirements shall be proportionately reduced for that portion of a Federal lease year for which suspension of operations and production is directed or granted by the authorized officer, in the interest of conservation of recoverable coal reserves and other resources, in accordance with paragraph (b) of this section.

(3) The term, including the diligent development period, of any Federal lease shall be extended by adding to it any period of suspension in accordance with paragraph (b) of this section, of operations and production.

(4) A suspension in accordance with paragraph (b) of this section does not suspend the permit and the operator/lessee's reclamation obligation under the permit.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983, and amended at 53 FR 49986, Dec. 13, 1988]

§ 3483.4 Payment of advance royalty in lieu of continued operation.

(a) Advance royalty may only be accepted in lieu of continued operation upon application to and approval by the authorized officer.

(b) However, any request by an operator/lessee for suspension of the continued operation requirement and payment of advance royalty in lieu thereof shall be made no later than 30 days after the beginning of the continued operation year. If an operator/lessee requests authorization to pay advance royalty in lieu of continued operation later than 30 days after the beginning of any continued operation year, the authorized officer may condition acceptance of advance royalty on the payment of a late payment charge on the amount of the advance royalty due. The late payment charge will be calculated in accordance with 30 CFR 218.20.

(c) For advance royalty purposes, the value of the Federal coal will be calculated in accordance with § 3485.2 of this title and this section. When advance royalty is accepted in lieu of continued operation, it shall be paid in an amount equivalent to the production royalty that would be owed on the production of 1 percent of the recoverable coal reserves or the Federal LMU recoverable coal reserves. The advance royalty rate for an LMU shall be deemed to be 8 percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered by only underground mining operations and 12½ percent where the Federal LMU recoverable coal reserves contained in the LMU would be recovered only by other mining operations. For LMU's that contain Federal LMU recoverable coal reserves that would be recovered by a combination of underground and other mining methods, the advance royalty rate shall be deemed to be 12½ percent. The unit value of the recoverable coal reserves for determining the advance royalty payment for a Federal lease or LMU shall be:

(1) The unit value for production royalty purposes of coal produced and sold under the Federal coal lease or LMU during the immediately preceding production royalty payment period; or

(2) Computed at the average unit price at which coal from other Federal leases in the same region was sold during such period, if no coal was produced and sold under the Federal coal lease or LMU during the immediately preceding royalty payment period, or if the authorized officer finds that there is an insufficient number of such sales to determine such value equitably; or

(3) Determined by the authorized officer, if there were no sales of Federal coal from such region during such period or if the authorized officer finds that there is an insufficient number of such sales to determine such value equitably.

(d) The aggregate number of years during the period of any Federal coal lease or LMU for which advance royalty may be accepted in lieu of the requirement of continued operation shall not exceed 10. For Federal leases issued prior to August 4, 1976, advance royalty shall not be accepted in lieu of continued operation for more than a total of 10 years following the first lease readjustment after August 4, 1976. Any continued operation year in which any advance royalty is paid shall be deemed a year in which advance royalty is accepted in lieu of continued operation for the purposes of this paragraph. However, if an operator/lessee meets the requirement for continued operation in any continued operation year in which the operator/lessee has paid advance royalty, such year shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the Federal lease or LMU. The number of years for which advance royalty has been paid under any Federal coal lease prior to its inclusion in an LMU shall not be considered when calculating the maximum number of years for which advance royalty may be accepted for the LMU.

(e) The dollar amount of any production royalty for a Federal coal lease or LMU owed for any continued operation year during or subsequent to the continued operation year in which advance royalty is paid, shall be reduced (but not below zero) by the dollar amount of any advance royalty paid under that Federal lease or LMU to the extent that such advance royalty has not been used to reduce production royalty for a prior year.

(f) No advance royalty paid during the initial 20-year term of a Federal coal lease or LMU shall be used to reduce a production royalty pursuant to paragraph (e) of this section after the 20th year of the Federal coal lease or LMU. For purposes of this paragraph, the initial 20-year term of a Federal lease shall commence on the effective date of the Federal lease for all Federal leases issued after August 4, 1976; on the effective date of the first lease readjustment after August 4, 1976, for all Federal leases issued prior to August 4, 1976; and on the effective date of LMU approval for all LMU's. Any advance royalty paid on a Federal lease prior to its inclusion in an LMU shall be credited to the LMU and shall be considered to have been paid on the date of LMU approval for the purposes of this paragraph, provided that the Federal lease has been included in an LMU within the initial 20-year term of the Federal lease as determined in this paragraph and to the extent that the advance royalty has not already been credited against production royalty on the Federal lease.

(g) If an operator/lessee fails to make an approved advance royalty payment in any continued operation year, the authorized officer shall inform the operator/lessee in writing that the operator/lessee is in violation of the continued operation requirement. If the operator/lessee then fails to comply with 30 CFR 218.200, the Federal lease or LMU shall be subject to cancellation pursuant to § 3483.2 of this title.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

§ 3483.5 Crediting of production toward diligent development.

(a) For Federal coal leases issued after August 4, 1976, all production after the effective date of the Federal lease shall be credited toward diligent development.

(b) For Federal coal leases issued prior to August 4, 1976, all production after the effective date of the first lease readjustment after August 4, 1976, shall be credited toward diligent development.

(c) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under § 3483.1 of this title to be subject to the diligent development and continued operation requirements of the rules of this part, all production after the effective date of the operator/lessee's election shall be applied toward diligent development.

(d) For Federal coal leases issued prior to August 4, 1976, that have not been readjusted after August 4, 1976, if the operator/lessee has elected under § 3483.1 of this title to be subject to the diligent development and continued operation requirements of the rules of this part, all production after August 4, 1976, that occurred prior to the effective date of the operator/lessee's election shall be applied toward diligent development if the operator/lessee so requests.

(e) For Federal coal leases issued prior to August 4, 1976, that have been readjusted after August 4, 1976, all production after August 4, 1976, that occurred prior to the effective date of the first lease readjustment after August 4, 1976, shall be applied toward diligent development if the operator/lessee so requests. Such a request shall comply with the election application provisions at § 3483.1(b)(1) of this title. Any production after such readjustment shall be applied toward diligent development pursuant to paragraph (b) of this section.

(f) For Federal coal leases issued prior to August 4, 1976, that are governed by the Federal lease clauses which describe the minimum production requirements until the first lease readjustment after August 4, 1976, no production prior to the effective date of that first Federal lease readjustment shall be applied toward diligent development.

(g) For LMU's, any production credited under the rules of this part to a Federal lease prior to its inclusion in the LMU shall be applied toward diligent development for the LMU.

§ 3483.6 Special logical mining unit rules.

(a) Production anywhere within the LMU, of either Federal or non-Federal recoverable coal reserves or a combination thereof, shall be applied toward satisfaction of the requirements of the rules of this part for achievement of diligent development and continued operation for the LMU.

(b) The dates for submission of a resource recovery and protection plan and achievement of diligent development shall not be changed by any enlargement or diminution of the LMU.

Subpart 3484—Performance Standards

§ 3484.1 Performance standards for exploration and surface and underground mining.

The following performance standards shall apply to exploration, development, production, resource recovery and protection, MER, and preparation and handling of coal under Federal leases and licenses, and LMU's.

(a) *Performance standards for exploration.* (1) The operator/lessee shall comply with the standards of the rules of this part and with all applicable requirements of the surface management agency, 30 CFR 815.15, or an approved State program.

(2) The operator/lessee, if required by the authorized officer, shall set and cement casing in the hole and install suitable blowout prevention equipment when drilling on lands valuable or prospectively valuable for oil, gas, or geothermal resources.

(3) All exploration drill holes must be capped with at least 5 feet of cement and plugged with a permanent plugging material that is unaffected by water and hydrocarbon gases and will prevent the migration of gases and water in the drill hole under normal hole pressures. For exploration holes drilled deeper than stripping limits, the operator/lessee, using cement or other suitable plugging material approved by the authorized officer, shall plug the hole through the thickness of the coal bed(s) or mineral deposit(s) and through aquifers for a distance of at least 50 feet above and below the coal bed(s) or mineral deposit(s) and aquifers, or to the bottom of the drill hole. A lesser cap or plug may be approved by the authorized officer. Exploration activities shall be managed to prevent water pollution and mixing of ground and surface waters and ensure the safety of people, livestock, and wildlife.

(4) The operator/lessee shall retain for 1 year, unless a shorter time period is authorized by the authorized officer, all drill and geophysical logs and shall make such logs available for inspection or analysis by the authorized officer, if requested. The authorized officer, at his discretion, may require the operator/lessee to retain representative samples of drill cores for 1 year. Confidentiality of such information will be accorded pursuant to the provisions at § 3481.3 of this title.

(5) The operator/lessee may utilize exploration drill holes as surveillance wells for the purpose of monitoring the effects of subsequent operations on the quantity, quality, or pressure of ground water or mine gases only with the written approval of the authorized officer, in consultation with the regulatory authority. The operator/lessee may convert exploration drill holes to water wells only after approval of the operator/lessee's written request by the authorized officer and the surface owner or authorized officer, in consultation with the regulatory authority. All such approvals shall be accompanied by a corresponding transfer of responsibility for any liability including eventual plugging, reclamation, and abandonment. Nothing in this paragraph shall supersede or affect the applicability of any State law requirements for such a transfer, conversion, or utilization as a supply for domestic consumption.

(b) *General performance standards for surface and underground mining*—(1) *Maximum economic recovery (MER)*. Upon approval of a resource recovery and protection plan for an LMU, or for a Federal lease issued or readjusted after August 4, 1976, the operator/lessee shall conduct operations to achieve MER of the Federal coal. To determine that MER of the Federal coal will be achieved, the authorized officer shall consider the information submitted by the operator/lessee under § 3482.1(c) and/or § 3487.1(c) of this title. The authorized officer may request additional information from the operator/lessee to aid in the MER determination. The operator/lessee shall consider coal preparation operations to avoid the wasting of coal and to encourage the achievement of MER. Federal leases issued prior to August 4, 1976, that have not yet been readjusted after August 4, 1976, shall comply with MLA regarding conservation of the recoverable coal reserves and other resources.

(2) Diligent development, continued operation, advance royalty, and 3-year resource recovery and protection plan submission requirements are addressed at §§ 3483.1 through 3483.6 of this title.

(3) *Unexpected wells*. The operator/lessee shall notify the authorized officer promptly if operations encounter unexpected wells or drill holes which could adversely affect the recovery of coal during mining operations, and shall take no further action that would disturb such wells or drill holes without the approval of the authorized officer.

(4) *Resource recovery and protection*. The operator/lessee shall conduct efficient operations to recover

the recoverable coal reserves; prevent wasting and conserve the recoverable coal reserves and other resources; prevent damage or degradation to coal-bearing or mineral-bearing formations; and ensure that other resources are protected upon abandonment.

(5) *Release of lease bond.* Subsequent to permanent abandonment of mining operations, the authorized officer will determine if the operator/lessee has met obligations required under the Federal lease for resource recovery and protection, and will determine if the operator/lessee has met the Federal lease requirements pertaining to rentals and royalties. The authorized officer will make appropriate recommendations to the authorized officer for reduction or termination of the Federal lease bond.

(c) *Performance standards for underground mines*—(1) *Underground resource recovery.* Underground mining operations shall be conducted so as to prevent wasting of coal and to conserve recoverable coal reserves consistent with the protection and use of other resources. No entry, room, or panel workings in which the pillars have not been completely mined within safe limits shall be permanently abandoned or rendered inaccessible, except with the prior written approval of the authorized officer.

(2) *Subsidence.* The operator/lessee shall adopt mining methods which ensure proper recovery of recoverable coal reserves under MLA, as determined by the authorized officer. Operators/lessees of underground coal mines shall adopt measures consistent with known technology in order to prevent or, where the mining method used requires subsidence, control subidence, maximize mine stability, and maintain the value and use of surface ands consistent with 30 CFR 784.20 nd 817.121, 817.122, 817.124, and 17.126, or applicable requirements of n approved State program. Where illars are not removed and controlled ubsidence is not part of the resource ecovery and protection plan, pillars of dequate dimensions shall be left for urface stability, giving due consideration to the thickness and strength of he coal beds and the strata above and mmediately below the coal beds.

(3) *Top coal.* Top coal may be left in underground mines only upon approval by the authorized officer. The determination of mining height in thick coal beds will take into consideration safety factors, available equipment, overall coal bed thickness, and MER. The bottom coal left, if determined by the authorized officer to be of a minable thickness, should be maintained at a uniform thickness to allow recovery in the future as new technology is developed and economics allow.

(4) *Multiple coal bed mining.* (i) In general, the recoverable coal reserves in the upper coal beds shall be mined before the lower coal beds; simultaneous workings in each upper coal bed shall be kept in advance of the workings in each lower coal bed. The authorized officer may authorize mining of any lower coal beds before mining the upper coal bed(s) only after a technical justification, submitted to the authorized officer by the operator/lessee, shows that recovery of all coal bed(s) will not be adversely affected.

(ii) In areas subject to multiple coal bed mining, the protective barrier pillars for all main and secondary development entries, main haulageways, primary aircourses, bleeder entries, and manways in each coal bed shall be superimposed regardless of vertical separation or rock competency; however, modifications and exceptions to, or variations from, this requirement may be approved in advance by the authorized officer.

(5) The authorized officer shall approve the conditions under which an underground mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this part.

(6) *Barrier pillars left for support.* (i) The operator/lessee shall not, without prior consent of the authorized officer, mine any recoverable coal reserves or drive any underground workings within 50 feet of any of the outside boundary lines of the federally leased or licensed land, or within such greater distance of said boundary lines as the authorized officer may prescribe with consideration for State or Federal environmental or safety laws. The operator/lessee may be required to pay for unauthorized mining of bar-

rier pillars. The authorized officer may require that payment shall be up to, and include, the full value of the recoverable coal reserves mined from the pillars. The drilling of any lateral holes within 50 feet of any outside boundary shall be done in consultation with the authorized officer.

(ii) If the coal in adjoining premises has been worked out, an agreement shall be made with the coal owner prior to the mining of the coal remaining in the Federal barrier pillars which otherwise may be lost. If the water level beyond the pillar is below the operator/lessee's adjacent operations, and all the safety factors have been considered, the operator/lessee, on the written order of the authorized officer, shall mine out and remove all available Federal recoverable coal reserves in such barrier if it can be mined without undue hardship to the operator/lessee; with due consideration for safety; and pursuant to existing mining, reclamation, and environmental laws and rules. Either the operator/lessee or the authorized officer may initiate the proposal to mine coal in a barrier pillar.

(7) The abandonment of a mining area shall require the approval of the authorized officer.

(d) *Performance standards for surface mines.* (1) Pit widths for each coal bed shall be engineered and designed so as to eliminate or minimize the amount of coal fender to be left as a permanent pillar on the spoil side of the pit.

(2) The amount of bottom or rider coal beds wasted in each pit will be minimized consistent with individual mine economics and the coal quality standards that must be maintained by the operation.

(3) The abandonment of a mining area shall require the approval of the authorized officer.

(4) If a coal bed exposed by surface mining or an accumulation of slack coal or combustible waste becomes ignited, the operator/lessee shall immediately take all necessary steps to extinguish the fire and protect the remaining coal.

(5) The authorized officer shall approve the conditions under which a surface mine, or portions thereof, will be temporarily abandoned, pursuant to the rules of this part.

(6) *Barrier or boundary coal.* The operator/lessee shall be encouraged by the authorized officer, in the interest of conservation of recoverable coal reserves and other resources, to mine coal up to the Federal lease or license boundary line; provided that, the mining is in compliance with existing State and Federal mining, environmental and reclamation laws and rules, the mining does not conflict with existing surface rights, and the mining is carried out without undue hardship to the operator/lessee and with due consideration for safety.

(e) *Performance standards for auger mines.* (1) If auger mining is proposed, the authorized officer shall take into account the percentage of recovery which in general shall exceed 30 percent, and the probable effect on recovering the remaining adjacent recoverable coal reserves by underground mining. If underground mining from the highwall or outcrop is contemplated in the foreseeable future, auger mining may not be approved if underground mining would ensure greater recovery of the unmined recoverable coal reserves. Where auger mining is authorized, the authorized officer will require a sufficient number and size of pillars at regular intervals along the highwall or outcrop to ensure access to the unmined recoverable coal reserves.

(2) A plan for recovery of recoverable coal reserves by auger methods shall be designed to achieve MER.

(3) Auger mining must comply with the rules of this part, and 30 CFR Chapter VII or applicable requirements of an approved State program.

[47 FR 33179, July 30, 1982; 47 FR 533 Nov. 26, 1982. Redesignated at 48 FR 41 Sept. 16, 1983]

§ 3484.2 Completion of operations and permanent abandonment.

(a) Before permanent abandonment of exploration operations, all openings and excavations shall be closed, backfilled, or otherwise permanently dealt with in accordance with sound engineering practices and according to the approved exploration plan. Drill holes trenches, and other excavations for exploration shall be abandoned in such a manner as to protect the surface and not endanger any present or future underground operation, or any deposit of coal, oil, gas, mineral resources, or ground water. Areas disturbed by exploration operations will be graded, drained, and revegetated.

(b) Upon permanent abandonment of mining operations, the authorized officer will require that the unmined recoverable coal reserves and other resources be adequately protected. Upon completion of abandonment, the authorized officer will inform the responsible office of the surface managing agency and regulatory authority as to whether the abandonment has been completed in compliance with the rules of this part.

Subpart 3485—Reports, Royalties and Records

§ 3485.1 Reports.

(a) *Exploration reports.* The operator/lessee shall file with the authorized officer the information required in paragraph (b) of this section. Such filing shall be within 30 days after the end of each calendar year and promptly upon completion or suspension of exploration operations, unless otherwise provided in the exploration license or Federal lease, and at such other times as the authorized officer may request.

(b) *Exploration report content.* The exploration report shall contain the following information:

(1) Location(s) and serial number(s) of the federally leased or licensed lands.

(2) Nature of exploration operations.

(3) Number of holes drilled and/or other work performed during the year or report period.

(4) Total footage drilled during the year or other period as determined by the authorized officer.

(5) Map showing all holes drilled, other excavations, and the coal outcrop lines.

(6) Analyses of coal and other pertinent tests obtained from exploration operations during the year.

(7) Copies of all in-hole mechanical or geophysical stratigraphic surveys or logs, such as electric logs, gamma ray-neutron logs, sonic logs, or any other logs. The records shall include a log of all strata penetrated and conditions encountered such as water, quicksand, gas, or any unusual conditions.

(8) Status of reclamation of the disturbed areas.

(9) A statement on availability and location of all drill hole logs and representative drill cores retained by the operator/lessee pursuant to § 3484.1(a) of this title.

(10) Any other information requested by the authorized officer.

(c) Any coal reserve base, minable reserve base or recoverable coal reserves estimates generated from an exploration license shall be submitted to the authorized officer within 1 year after completion of drilling operations.

(d) *Production reports and payments.* (1) Operators/lessees shall report on USGS Form 9-373A, within 30 days after expiration of the period covered by the report, all coal mined, the basis for computing Federal royalty and any other form requirements, and shall make all payments due. Acceptance of the report and payment shall not be construed as an accord and satisfaction on the operator/lessee's Federal royalty obligation.

(2) Licensees shall report all coal mined on a semiannual basis on the report form provided.

(3) Non-Federal LMU production shall be reported in accordance with § 3487.1(h)(1) of this title.

(e) *Penalty.* If an operator/lessee knowingly records or reports less than the true weight or value of coal mined, the authorized officer shall impose a penalty equal to either double the amount of Federal royalty due on the shortage or the full value, as determined in § 3485.2 of this title, of the shortage. If, after notice, an operator/lessee or licensee maintains false records or files false reports, the authorized officer may recommend to the responsible officer of the surface managing agency that action be initiated to cancel the Federal lease or license, in addition to the imposition of any penalties.

(f) *Confidentiality.* Confidentiality of any information required under this section shall be determined in accordance with § 3487.1(h)(1) of this title.

§ 3485.2 Royalties.

(a) Provisions for the payment of advance royalty in lieu of continued operation are contained at § 3483.4 of this title.

(b) An overriding royalty interest, production payment, or similar interest that exceeds 50 percent of royalty first payable to the United States under the Federal lease, or when added to any other overriding royalty interest exceeds that percentage, except those created in order to finance a mine, shall not be created by a Federal lease transfer or surface owner consent. However, when an interest in the Federal lease or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows that he has made substantial investments for improvements directly related to exploration, development, and mining on the land covered by the transfer that would justify a higher payment.

(c)(1) The authorized officer may waive, suspend, or reduce the rental on a Federal lease, or reduce the Federal royalty, but not advance royalty, on a Federal lease or portion thereof. The authorized officer shall take such action for the purpose of encouraging the greatest ultimate recovery of Federal coal, and in the interest of conservation of Federal coal and other resources, whenever in his judgment it is necessary to promote development, or if he finds that the Federal lease cannot be successfully operated under its terms. In no case shall the authorized officer reduce to zero any royalty on a producing Federal lease.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the authorized officer. The application shall contain the serial number of the Federal lease, the Bureau of Land Management State Office, the name and address of the record title holder and any operator/lessee, and the description of the lands in the manner provided by 43 CFR 3471.1.

(i) Each application shall include the name and location of the mine; a map showing the extent of the existing, proposed or adjoining mining operations; a tabulated statement of the Federal coal mined, if any, and subject to Federal royalty for the existing or adjoining operation covering a period of not less than 12 months before the date of filing of the application; and existing Federal rental and royalty rates on Federal leases covered by the application.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire mine, the income from the sale of coal, and all facts indicating whether the mine can be successfully operated under the Federal rental and royalty provisions fixed in the Federal lease or why the reduction is necessary to promote development. Where the application is for a reduction in Federal royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any. If the Federal lease included in the application is not part of nor adjoining an operating mine, these detailed financial data may be obtained from another operating mine which is in close proximity and for which the authorized officer has deemed to have similar operating characteristics.

(iii) The applicant shall also file a copy of agreements, between the operator/lessee and the holders of any royalty interests or production payments other than those created in order to finance a mine, to a reduction of all other royalties from the Federal lease so that the total royalties and production payments owed the holders of these interests will not be in excess of one-half of the Federal royalties should the Federal royalty reduction be granted.

(3) If the applicant does not meet the criteria of the rules of this part, the authorized officer shall reject such application or request more data from the operator/lessee.

(4) If the applicant meets the criteria of the rules of this part, the authorized officer shall act on the application.

(d) If a Federal coal lease that pro- rides for a cents-per-ton Federal royal- y is developed by *in situ* technology, BLM will establish a procedure for es- imating tonnage for royalty purposes.

47 FR 33179, July 30, 1982. Redesignated at 8 FR 41589—41594, Sept. 16, 1983, and mended at 54 FR 1532, Jan. 13, 1989]

3485.3 Maintenance of and access to records.

(a) Operators/lessees shall maintain urrent and accurate records for the 'ederal lease or LMU showing:

(1) The type, quality, and weight of ll coal mined, sold, used on the prem- es, or otherwise disposed of, and all oal in storage (remaining in invento- y).

(2) The prices received for all coal old and to whom and when sold.

(b) [Reserved]

(c) Licensees must maintain a cur- ent record of all coal mined and/or emoved.

(d) Operators/lessees will retain ese records for a period of time as etermined by the authorized officer accordance with current BLM rules d procedures.

7 FR 33179, July 30, 1982, as amended at FR 35641, Aug. 5, 1983. Redesignated at FR 41589, Sept. 16, 1983]

Subpart 3486—Inspection, Enforcement, and Appeals

486.1 Inspections.

a) The operator/lessee shall provide cess, at all reasonable times, to the thorized officer for inspection or in- stigation of operations in order to ermine whether the operations are compliance with all applicable laws, es, and orders; the terms and condi- ns of the Federal lease or license; d requirements of any approved ex- ration plan for:

1) Abandonment.

2) Environmental protection and lamation practices.

o) The operator/lessee shall provide ess, at all reasonable times, to the horized officer for inspection or in- tigation of operations in order to ermine whether the operations are ompliance with all applicable laws, es, and orders; the terms and conditions of the Federal lease or license; and requirements of any approved resource recovery and protection plan for:

(1) Production practices.

(2) Development.

(3) Resource recovery and protection.

(4) Diligent development and continued operation.

(5) Audits of Federal rental and royalty payments on producing Federal leases.

(6) Abandonment.

(7) MER determinations.

§ 3486.2 Notices and orders.

(a) *Address of responsible party.* Before beginning operations, the operator/lessee shall inform the authorized officer in writing of the operator/lessee's post office address and the name and post office address of the superintendent or designated agent who will be in charge of the operations and who will act as the local representative of the operator/lessee. Thereafter, the authorized officer shall be informed of any changes.

(b) *Receipt of notices and orders.* The operator/lessee shall be construed to have received all notices and orders that are mailed by certified mail, return receipt requested, to the mine office or handed to a responsible official connected with the mine or exploration site for transmittal to the operator/lessee or his local representative.

§ 3486.3 Enforcement.

(a) If the authorized officer determines that an operator/lessee has failed to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and such noncompliance does not threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits or other resources, or affect the royalty provisions of the rules of this part, the authorized officer shall serve a notice of noncompliance upon the operator/lessee by delivery in person to him or his agent, or by certified mail, return receipt requested, addressed to the operator/lessee at his last known address. Failure of the operator/lessee to take action in accordance with the notice of noncompliance within the time limits specified by the authorized officer shall be grounds for cessation of operations upon notice by the authorized officer. The authorized officer may also recommend to the authorized officer the initiation of action for cancellation of the Federal lease or license and forfeiture of any Federal lease bonds.

(b) The notice of noncompliance shall specify in what respect(s) the operator/lessee has failed to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and shall specify the action that must be taken to correct such noncompliance and the time limits within which such action must be taken.

(c) If, in the judgment of the authorized officer, an operator/lessee is conducting activities which fail to comply with the rules of this part, the terms and conditions of the Federal lease or license, the requirements of approved exploration or resource recovery and protection plans, or orders of the authorized officer, and/or which threaten immediate and serious damage to the mine, the deposit being mined, valuable ore-bearing mineral deposits, or, regarding exploration, the environment, the authorized officer shall order the immediate cessation of such activities without prior notice of noncompliance.

(d) A written report shall be submitted by the operator/lessee to the authorized officer when such noncompliance has been corrected. Upon concurrence by the authorized officer that the conditions which warranted the issuance of a notice or order of noncompliance have been corrected, the authorized officer shall so notify the operator/lessee in writing.

(e) The authorized officer shall enforce requirements of SMCRA only if he finds a violation, condition, or practice that he determines to be an emergency situation for which an authorized representative of the Secretary is required to act pursuant to 30 CFR 843.11 and 843.12.

[47 FR 33179, July 30, 1982; 47 FR 53366, Nov. 26, 1982. Redesignated at 48 FR 41589, Sept. 16, 1983]

§ 3486.4 Appeals.

Decisions or orders issued by the BLM under part 3480 of this title may be appealed pursuant to part 4 of this title.

[48 FR 41593, Sept. 16, 1983]

Subpart 3487—Logical Mining Unit

§ 3487.1 Logical mining units.

(a) An LMU shall become effective only upon approval of the authorized officer. The effective date for an LMU may be established by the authorized officer between the date that the authorized officer receives an application for LMU approval and the date the authorized officer approves the LMU. The effective date of the LMU approval shall be determined by the authorized officer in consultation with the LMU applicant. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both, in accordance with paragraph (g) of this section. An LMU may be diminished by creation of other separate Federal leases or LMU's in accordance with paragraph (g) of this section.

(b) The authorized officer may direct, or an operator/lessee may initiate, the establishment of an LMU containing only Federal coal leases issued after August 4, 1976. The authorized officer may direct, or an operator/lessee may initiate, the establishment of an LMU containing Federal coal leases issued prior to August 4, 1976, provided that the operators/lessees consent to making all such Federal leases within the LMU subject to the uniform requirements for submittal of a resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, MER, advance royalty, and royalty reporting periods (but not royalty rates) made applicable by the LMU stipulations and the rules of

this part. Any Federal lease included
in an LMU shall have its terms amend-
ed as necessary so that its terms and
conditions are consistent with the stip-
ulations required for the approval of
the LMU pursuant to paragraph (e) of
this section.

(c) *Contents of an LMU application.*
An operator/lessee must submit five
opies of an LMU application to the
uthorized officer if the operator/
essee is applying on his own initiative
o combine lands into an LMU, or if di-
ected to establish an LMU by the au-
horized officer in accordance with
aragraph (b) of this section. Such ap-
lication shall include the following:

(1) Name and address of the desig-
ated operator/lessee of the LMU.

(2) Federal lease serial numbers and
escription of the land and all coal
eds considered to be of minable thick-
ess within the boundary of the LMU.
lentification of those coal beds pro-
osed to be excluded from any Federal
ase which would be a part of the
MU.

(3) Documents and related informa-
on supporting a finding of effective
ntrol of the lands to be included in
e LMU.

(4) Sufficient data to enable the au-
orized officer to determine that
ER of the Federal recoverable coal
serves will be achieved by establish-
ent of the LMU. If a coal bed, or por-
n thereof, is proposed not to be
ned or to be rendered unminable by
e operation, the operator/lessee
all submit appropriate justification
the authorized officer for approval.

5) Any other information required
the authorized officer.

6) If any confidential information is
luded in the submittal and is identi-
d as such by the operator/lessee, it
ll be treated in accordance with
481.3 of this title.

d) *Consultation.* (1) Prior to ap-
val, the authorized officer shall
sult with the operator/lessee about
Federal recoverable coal reserves
hin the LMU that the operator/-
ee does not intend to mine and any
leral recoverable coal reserves that
operator/lessee intends to relin-
sh. The authorized officer shall
consult with the operator/lessee
ut Federal lease revisions to make
the time periods for resource recovery and protection plan submittals, the 40-year LMU recoverable coal reserves exhaustion requirement, and diligent development, continued operation, advance royalty and Federal rental and royalty collection requirements applicable to each producing Federal lease consistent with the LMU stipulations.

(2) The public participation procedures of § 3481.2 of this title shall be completed prior to approval of an LMU.

(e) *Stipulations.* Prior to the approval of an LMU, the authorized officer shall notify the operator/lessee and responsible officer of the surface managing agency of stipulations required for the approval of the proposed LMU. The LMU stipulations shall provide for:

(1) The submittal, within 3 years from the effective date of LMU approval, of a resource recovery and protection plan that contains the information required by § 3482.1(c) of this title for all Federal and non-Federal lands within the LMU.

(2) A schedule for the achievement of diligent development and continued operation for the LMU. The schedule shall reflect the date for achieving diligent development and maintaining continued operation of the individual Federal leases included in the LMU, consistent with the rules of this part. An operator/lessee may request to pay advance royalty in lieu of continued operation in accordance with § 3482.1(c) of this title.

(3) Uniform reporting periods for Federal rental and royalty on Federal leases.

(4) The revision, if necessary, of terms and conditions of the individual Federal leases included in the LMU. The terms and conditions of the Federal leases, except for Federal royalty rates, shall be amended so that they are consistent with the stipulations of the LMU.

(5) Estimates of the Federal LMU recoverable coal reserves, and non-Federal LMU recoverable coal reserves, using data acquired by generally acceptable exploration methods.

(6) Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the date that coal is first

produced from the LMU, after LMU approval, as determined during the first royalty reporting period following such date.

(7) Any other condition that the authorized officer determines to be necessary for the efficient and orderly operation of the LMU.

(f) *Criteria for approving the establishment of an LMU.* The authorized officer shall, except for good cause stated in a decision disapproving the application, approve an LMU if it meets the following criteria:

(1) The LMU fully meets the LMU definition.

(2) Mining operations on the LMU will achieve MER of Federal recoverable coal reserves within the LMU. A single operation may include a series of excavations.

(3) All single Federal leases that are included in more than one LMU shall be segregated into two or more Federal leases. If only a portion of a Federal lease is included in an LMU, the remaining land shall be segregated into another Federal lease. The authorized officer will consult with the authorized officer about the segregation of such Federal leases. The operator/lessee may apply to relinquish any such portion of a Federal lease under 43 CFR 3452.1.

(4) The operator/lessee has agreed to the LMU stipulations required by the authorized officer for approval of the LMU.

(5) The LMU does not exceed 25,000 acres, including both Federal and non-Federal lands.

(g) *Modification of an LMU.* (1) The boundaries of an LMU may be modified either upon application by the operator/lessee and approval of the authorized officer after consultation with the responsible officer of the surface managing agency, or by direction of the authorized officer after consultation with the authorized officer. In accordance with § 3482.2(a)(3) of this title, the authorized officer may adjust only the estimate of LMU recoverable coal reserves pursuant to departmental actions or orders that modify the LMU boundaries, or upon approval of an operator/lessee application.

(2) Upon application by the operator/lessee, an LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal deposits, or both. The LMU boundaries may also be enlarged as the result of the enlargement of a Federal lease in the LMU, pursuant to 43 CFR part 3432. An LMU may be diminished by creation of other separate Federal leases or LMU's or by the relinquishment of a Federal lease or portion thereof, pursuant to 43 CFR part 3452.

(3) In considering an application for the modification of an LMU, the authorized officer shall consider modifying the LMU stipulations, including the production requirement for commercial quantities.

(4) Pursuant to paragraph (e) of this section, the 40-year mine-out period for an LMU shall not be extended as the result of the enlargement of an LMU or as the result of the revision or amendment of a resource recovery and protection plan.

(h) *Administration of LMU operations.* An LMU shall be administered in accordance with the following criteria:

(1) Where production from non-Federal lands in the LMU is the basis, in whole or in part, for satisfaction of the requirements for diligent development or continued operation the operator/lessee shall provide a certified report of such production, as determined by the authorized officer. The certified report shall include a map showing the area mined and the amount of coal mined.

(2) *Diligent development, continued operation and advance royalty.* Operators/lessees must comply with the diligent development, continued operation, and advance royalty requirements contained at §§ 3483.1 through 3483.6 of this title.

(3) Operators/lessees must comply with the LMU stipulations.

[47 FR 33179, July 30, 1982. Redesignated at 48 FR 41589-41594, Sept. 16, 1983, and amended at 51 FR 13229, Apr. 18, 1986]

Group 3500—Management of Solid Minerals Other Than Coal

NOTE: The information collection require-
eents contained in parts 3500, 3510, 3520,
530, 3540, 3550, 3560, and 3570 have been
pproved by the Office of Management and
udget under 44 U.S.C. 3507 and assigned
learance numbers 1004-0030, 1004-0121 and
004-0142. The information is being collect-
to permit the authorized officer to deter-
ine whether an applicant is qualified to
old a lease for exploration, development
d utilization of leasable minerals other
an coal and oil shale on the public lands.
he information will be used to make this
etermination. A response is required to
tain a benefit.

ee 51 FR 15212, Apr. 22, 1986)

ART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

bpart 3500—Leasing of Solid Minerals Other Than Coal and Oil Shale: General

c.
00.0-3 Authority.
00.0-5 Definitions.
00.1 Nondiscrimination.
00.2 False statements.
0.3 Unlawful interests.
0.4 Appeals.
0.5 Filing of documents.
0.6 Multiple development.
0.7 Land use plans and environmental considerations.
0.8 Lands not subject to leasing.
0.9 Consent and consultation.
0.9-1 Federal lands administered by agencies outside of the Department of the Interior.
0.9-2 State's or charitable organization's ownership of surface overlying Federally-owned minerals.
0.9-3 Management of Federal minerals from reserved mineral estates.

ubpart 3501—Descriptions and Acreage

.1 Land descriptions.
.1-1 Public domain.
.1-2 Acquired lands.
.1-3 Accreted lands.
.2 Computing acreage holdings.

bpart 3502—Qualification Requirements

.1 Who may hold leases and permits.
.2 Qualifications and holdings statenents.
Sec.
3502.2-1 Filing of evidence.
3502.2-2 Individuals.
3502.2-3 Associations, including partnerships and trusts.
3502.2-4 Corporations.
3502.2-5 Heirs and devisees.
3502.2-6 Attorneys in-fact.
3502.3 Other parties in interest.

Subpart 3503—Fees, Rentals and Royalties

3503.1 Payments.
3503.1-1 Form of remittance.
3503.1-2 Where remitted.
3503.2 Production royalties, minimum royalties and overriding royalties.
3503.2-1 Production royalty rates.
3503.2-2 Minimum production and minimum royalty.
3503.2-3 Overriding royalties.
3503.2-4 Waiver, suspension, or reduction of rental, minimum royalty or royalties.
3503.3 Suspensions.
3503.3-1 Suspension of operations and production.
3503.3-2 Suspension of operations.

Subpart 3504—Bonds

3504.1 Bonding requirements.
3504.1-1 When filed.
3504.1-2 Where filed.
3504.1-3 Surety bonds and personal bonds.
3504.1-4 Individual permit and lease bonds.
3504.1-5 Statewide and nationwide bonds.
3504.1-6 Change in bond coverage.
3504.2 Default.
3504.3 Termination of period of liability.

Subpart 3506—Assignments and Subleases

3506.1 Permits and leases subject to assignment or sublease.
3506.2 Filing fees.
3506.3 Filing requirements.
3506.3-1 Record title assignments.
3506.3-2 Operating rights.
3506.3-3 Overriding royalty interests.
3506.4 Permit or lease account status.
3506.5 Bonds.
3506.5-1 Coverage.
3506.5-2 Continuing responsibility.
3506.6 Effective date.
3506.7 Extensions.

Subpart 3507—Fractional and Future Interest Permits and Leases

3507.1 Issuance of prospecting permits and leases.
3507.1-1 Prospecting permits.
3507.1-2 Leases.
3507.2 Forms and applications.
3507.3 Terms and conditions.
3507.4 Consent of agency or bureau.
3507.5 Where filed and filing fee.

Sec.
3507.6 Qualifications.
3507.7 Evidence of ownership.
3507.7-1 Present fractional interest.
3507.7-2 Future interest.
3507.8 Effective date of future interest leases.
3507.9 Rejection of application.

Subpart 3508—Mineral Lease Exchange

3508.0-1 Purpose.
3508.0-7 Scope.
3508.1 When exchange provisions apply.
3508.2 Exchange procedures.
3508.3 Issuance of lease.

Subpart 3509—Relinquishment, Termination, Expiration, and Cancellation

3509.1 Relinquishment.
3509.1-1 Prospecting permits.
3509.1-2 Leases.
3509.2 Termination of prospecting permits.
3509.3 Expiration.
3509.3-1 Prospecting permits.
3509.3-2 Leases.
3509.4 Cancellation.
3509.4-1 Prospecting permits.
3509.4-2 Leases.
3509.4-3 Bona fide purchasers.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3, Act of Sept. 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291-293); the Act of Mar. 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15213, Apr. 22, 1986, unless otherwise noted.

Subpart 3500—Leasing of Solid Minerals Other Than Coal and Oil Shale: General

§ 3500.0-3 Authority.

The statutory authority for the regulations in this group is as follows:

(a) *Leasable minerals*—(1) *Public domain.* The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181-287), including the Act of February 7, 1927 (30 U.S.C. 281-287), the Act of April 17, 1926 (30 U.S.C. 271-276), and the Act of June 28, 1944 (58 Stat. 483-485), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

(2) *Acquired lands.* The Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

(b) *Hardrock minerals.* (1) Section 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) transferred the functions of the Secretary of Agriculture relative to the leasing or other disposal of minerals to the Secretary of the Interior for lands acquired under the following statutes: (i) The Act of March 4, 1917 (16 U.S.C. 520); (ii) Title II of the National Industrial Recovery Act of June 16, 1933 (40 U.S.C. 401, 403(a) and 408); (iii) the 1935 Emergency Relief Appropriation Act of April 8, 1935 (48 Stat. 115, 118); (iv) section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); (v) the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (7 U.S.C. 1011(c) and 1018); and (vi) section 3 of the Act of June 28, 1952 (66 Stat. 285).

(2) Section 3 of the Act of September 1, 1949 (30 U.S.C. 192c) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83).

(3) The Act of June 30, 1950 (16 U.S.C. 508(b)) authorizes leasing of the hardrock minerals on National Forest lands in Minnesota.

(c) *Special acts.* (1) Gold, silver or quicksilver in confirmed private land grants are covered by the Act of June 8, 1926 (30 U.S.C. 291-293).

(2) Reserved minerals in lands patented to the State of California for parks or other purposes are covered by the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026).

(3) *National Park Service Areas.* Congress authorized mineral leasing, including the leasing of nonleaseable minerals in the manner prescribed by section 10 of the Act of August 4, 1939 (43 U.S.C. 387), in the following national recreation areas:

(i) Lake Mead National Recreation Area—The Act of October 8, 1964 (16 U.S.C. 460n-*et seq.*);

(ii) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—The Act of November 8, 1965 (16 U.S.C. 460q-*et seq.*);

(iii) Ross Lake and Lake Chelan National Recreation Areas—The Act of October 2, 1968 (16 U.S.C. 90c-*et seq.*)

(iv) Glen Canyon National Recreation Area—The Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*).

(4) *Shasta-Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the Act of November 8, 1965 (16 U.S.C. 460q-*et seq.*) authorizes mineral leasing, including the leasing of nonleasable minerals in the manner prescribed by section 3 of the Act of September 1, 1949 (30 U.S.C. 192c), on lands within the Shasta-Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

(5) *White Mountains National Recreation Area.* Sections 403, 404, and 1312 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2 through 460mm-4) authorize the Secretary of the Interior to permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area in the manner described by section 10 of the Act of August 4, 1939, as amended (43 U.S.C. 387), and the removal of leasable minerals from lands or interest in lands within the recreation area in accordance with the mineral leasing laws.

(6) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) authorizes the management and use of the public lands.

(7) The Independent Offices Appropriation Act (31 U.S.C. 9701) authorzes agencies to charge fees to recover he costs of providing services or hings of value.

51 FR 15213, Apr. 22, 1986; 51 FR 25204, uly 11, 1986]

§ 3500.0-5 Definitions.

As used in Group 3500, the term:

(a) *Secretary* means the Secretary of the Interior.

(b) *Director* means the Director, Bureau of Land Management.

(c) *State Director* means an employee of the Bureau of Land Management who has been designated as the chief administrative officer of one of the Bureau's 12 administrative areas designated as *States.*

(d) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in Group 3500 of this title.

(e) *Proper BLM office* means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Group 3500 of this title (see 43 CFR subpart 1821).

(f) *Public domain lands* means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of the United States through the operation of the public land laws, and others specifically identified by Congress as part of the public domain.

(g) *Acquired lands* means lands, including mineral estates, which are not public domain lands and which the United States obtained through purchase, gift, or condemnation, and includes lands previously disposed of under the public land laws including the mining laws.

(h) *Leasable minerals* means the chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium or sodium and related products; sulphur in the States of Louisiana and New Mexico and on all acquired lands; phosphate, including associated and related minerals; asphalt in certain lands in Oklahoma; and gilsonite (including all vein-type solid hydrocarbons).

(i) *Valuable deposit* means a mineral occurrence where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his/her labor and means, with a reasonable prospect of success, in developing a valuable mine.

(j) *Chiefly valuable* means a valuable deposit where there is no significant conflict between the extraction of sodium, sulphur or potassium and any non-mineral disposition of lands. Where such extraction conflicts with other disposition, the lands shall be deemed chiefly valuable for sodium, sulphur or potassium extraction if the economic value of the lands for extraction of such minerals exceeds its economic value for any non-mineral disposition.

(k) *Act* means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*).

(l) *Service* means the Minerals Management Service.

(m) *Bureau* means the Bureau of Land Management.

(n) *Hardrock minerals* means those locatable minerals for which a mineral patent may be obtained under the Mining Law of 1872 and which are not leasable minerals as defined in paragraph (h) of this section and oil, gas, coal and oil shale or mineral materials disposable under Group 3600 of this title. Hardrock minerals include, but are not limited to, copper, lead, zinc, magnesium, nickel, tungsten, gold, silver, bentonite, uranium, barite, feldspar and fluorspar.

§ 3500.1 Nondiscrimination.

Any person acquiring a lease under Group 3500 shall comply fully with the equal opportunity provisions of Executive Order 11246 of September 24, 1965, as amended, and the regulations and relevant orders of the Secretary of Labor (41 CFR Chapter 60) and 43 CFR part 17.

§ 3500.2 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for anyone knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

§ 3500.3 Unlawful interests.

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in part 20 of this title, shall be entitled to acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department—See 43 CFR part 20; Member of Congress—See R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431–433)

§ 3500.4 Appeals.

Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of Group 3500 of this title shall have a right of appeal pursuant to part 4 of this title.

§ 3500.5 Filing of documents.

(a) All necessary documents shall be filed in the proper BLM office. A document shall be considered filed when it is received in the proper BLM office.

(b) All information which is submitted to the Bureau under the regulations in this group shall be available to the public unless exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), or unless otherwise provided in this group.

§ 3500.6 Multiple development.

The granting of a permit or lease for the prospecting, development or production of deposits of any particular mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, or the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States. Each permit or lease shall reserve the right to allow any other uses, or to allow disposal, of the leased lands that will not unreasonably interfere with the exploration and mining operations of the permittee or lessee and the permittee/lessee shall make all reasonable efforts to avoid interference with such authorized uses.

§3500.7 Land use plans and environmental considerations.

(a) Any lease or permit issued under Group 3500 of this title shall be issued in conformance with the decisions, erms and conditions of a comprehensive land use plan for the mineral deposit in question.

(b) Before a lease or permit is issued, he authorized officer or the appropri-te surface management agency shall omply with the requirements of the ational Environmental Policy Act of 969 (42 U.S.C. 4321 *et seq.*).

(c) Leases and permits shall be sued in a manner consistent with any nsuitability designation made under 1610.7-1(b) of this title.

3500.8 Lands not subject to leasing.

The following lands are not subject leasing under the provisions of roup 3500:

(a) Lands within the boundaries of ny unit of the National Park System, cept as authorized by law;

(b) Lands within Indian Reserva-ons, except the Uintah and Ouray dian Reservation, Hillcreek Exten-on, State of Utah;

(c) Lands within incorporated cities, wns and villages;

(d) Lands within the National Petro-um Reserve—Alaska and oil shale re-rves and within the national petrole-n reserves;

e) Lands acquired by the United ates for development of helium, fis-nable material deposits or other nerals essential to the defense of e country, except leasable minerals;

f) Lands acquired by foreclosure or herwise for resale;

g) Acquired lands reported as sur-s under the Federal Property and ministrative Services Act of 1949 U.S.C. 471 *et seq.*); and

h) Any tidelands or submerged stal lands within the continental lf adjacent or littoral to any part of ds within the jurisdiction of the ited States.

§ 3500.9 Consent and consultation.

§ 3500.9-1 Federal lands administered by agencies outside of the Department of the Interior.

(a) Unless consent is required by law, public domain lands, the surface of which is administered by an agency outside of the Department of the Interior, shall be permitted or leased only after the Bureau of Land Management has consulted with the surface management agency.

(b) Acquired lands shall only be permitted or leased with the written consent of the head or other appropriate official of the surface management agency.

(c) An applicant may pursue the administrative remedies provided by a particular surface management agency where such agency has required special stipulations in the lease or permit, or has refused consent to issuance of the lease or permit. If the applicant notifies the authorized officer within 30 days of receipt of the Bureau's decision that he/she has requested the surface management agency to reconsider its decision, the time for filing an appeal under part 4 of this title is suspended until a decision is reached by such agency.

§ 3500.9-2 State's or charitable organization's ownership of surface overlying Federally-owned minerals.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for permit or lease and shall be given a reasonable time, not to exceed 90 days, within which to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations or file any objections it may have to the issuance of the lease or permit. Where a party controlling the surface opposes the issuance of a lease or permit or wishes to place such restrictive stipulations, but the facts submitted in opposition to issuance or concerning the necessity for restrictive stipulations expressed by the party controlling the surface do not provide adequate basis for such action, the final decision as to whether to issue the lease or permit shall be based on a determination by the authorized officer as to whether or not the interests of the United States would best be served thereby.

§ 3500.9-3 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provide in conveyances of title that all or certain minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and such regulations as the Secretary may prescribe, the lease, sale or disposal and administration and management of the use of such minerals shall be accomplished under the regulations of Subchapter C of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 682(b)) and the Federal Land Policy and Management Act of 1969 (43 U.S.C. 1701 *et seq.*).

Subpart 3501—Descriptions and Acreage

§ 3501.1 Land descriptions.

§ 3501.1-1 Public domain.

Each application shall contain a complete and accurate description of the lands for which the lease or permit is desired. The lands applied for shall be in reasonably compact form.

(a) If the lands have been surveyed under the public land rectangular system, each application shall describe the lands by legal subdivision, section, township and range. Generally, a quarter-quarter section or a lot is the smallest legal subdivision for which an application may be made.

(b) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications for lands shown on such approved protracted surveys shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(c) If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(d)(1) Prior to the issuance of a lease, all unsurveyed lands in the lease shall be surveyed.

(2) On a noncompetitive lease, the survey for unsurveyed lands shall be at the expense of the applicant.

(3) On a competitive lease, the survey of unsurveyed lands shall be at the expense of the United States.

§ 3501.1-2 Acquired lands.

(a)(1) If the lands have been surveyed under the rectangular system of public land surveys, the description shall conform to that system and the lands shall be described by legal subdivision, section, township, and range. Generally, a quarter-quarter section or a lot is the smallest legal subdivision for which an application may be made.

(2) Where the description cannot conform to the public land surveys, any boundaries which do not so conform shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not surveyed but within the area of the public land surveys, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected to a reasonably nearby official survey corner by courses and distances. Each application shall be accompanied by a map

ipon which the desired lands are
learly marked showing their location
vith respect to the administrative unit
r project of which they are a part.

(b) If the lands have not been sur-
eyed under the rectangular system of
ublic land surveys, and the tract is
ot within the area of the public land
urveys, it shall be described as in the
eed or other document by which the
nited States acquired title to the
nds or minerals. If the desired lands
onstitute less than the entire tract
quired by the United States, they
nall be described by courses and dis-
nces between successive angle points
n the boundary of the tract, tying by
ourse and distance into the descrip-
on in the deed or other document by
hich the United States acquired title
the lands. In addition, if the de-
ription in the deed or other docu-
ent by which the United States ac-
ired title to the lands does not in-
ude the courses and distances be-
een the successive angle points on
e boundary of the desired tract, the
scription in the application shall be
panded to include such courses and
stances. Each application shall be ac-
mpanied by a map upon which the
sired lands are clearly marked show-
their location with respect to the
ministrative unit or project of
ich they are a part.

c) If an acquisition tract number
s been assigned by the acquiring
ency to the identical tract desired, a
scription by such tract number shall
accepted in lieu of the description
uired in paragraphs (a)(2) and (b)
this section. However, such applica-
n shall be accompanied by the map
uired by paragraphs (a)(2) and (b)
this section.

FR 15213, Apr. 22, 1986; 51 FR 25204,
y 11, 1986]

01.1-3 Accreted lands.

Vhere an application includes any
reted lands that are not described
he deed to the United States, such
reted lands shall be described by
es and bounds, giving courses and
ances between the successive angle
nts on the boundary of the tract,
connected by courses and dis-
ces to an angle point on the perimeter of the acquired tract to which the accretions belong.

§ 3501.2 Computing acreage holdings.

(a) In computing acreage holdings or control, the accountable acreage of a party owning any interest, either directly or indirectly, shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage, except that no party shall be charged with its pro rata share of any acreage holdings of any association or corporation, unless it is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(b) The amount of acquired lands acreage for leasable minerals that may be held under lease or permit may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the Act. Public domain lease holdings shall not be charged against acquired lands lease holdings and vice versa; such respective holdings shall not be interchangeable.

(c) Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

Subpart 3502—Qualification Requirements

§ 3502.1 Who may hold leases and permits.

(a) Leases and permits may be held only by citizens of the United States, associations (including partnerships and trusts) of such citizens, corporations organized under the laws of the United States or of any State or territory thereof. Citizens of a foreign country may only hold interest in leases or permits through stock ownership, stock holding or stock control.

(b) Citizens of a foreign country may only hold interests in leases and permits for leasable minerals if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. A list of those countries denying similar or like privileges is available from any Bureau office.

(c) A mineral lease or permit shall not be issued to a minor. Leases or permits may be issued to a legal guardian or trustee of a minor.

(d) Except for an assignment or sublease under section 3506 of this title, a lease for leasable minerals shall be issued only to an entity if it is in compliance with section 2(a)(2)(A) of the act (compliance is determined for Federal coal leases in accordance with § 3472.1-2(e) of this title). A lease issued to any entity in violation of this paragraph (d) shall be subject to the cancellation provisions at § 3509.4 of this title. The term 'entity' is defined at § 3400.0-5(rr) of this title.

[51 FR 15213, Apr. 22, 1986, as amended at 51 FR 43923, Dec. 5, 1986]

§ 3502.2 Qualifications and holdings statements.

§ 3502.2-1 Filing of evidence.

Evidence of qualifications required by this section may be filed separately in the proper BLM Office. Thereafter, a reference by serial number to the record in which such evidence is filed, together with a statement as to any amendments, shall be acceptable in lieu of resubmitting the evidence with each application. It is the responsibility of applicants and lessees to assure that such evidence is current and accurate. An application referring to the serial number may be submitted only to the Bureau office where the evidence of qualifications is on file.

§ 3502.2-2 Individuals.

To qualify to hold a Federal prospecting permit, lease or license, an individual shall submit a signed statement showing:

(a) He/she is a U.S. citizen; and

(b) That his/her acreage holdings for the particular mineral concerned do not exceed the acreage holdings allowed for that mineral.

§ 3502.2-3 Associations, including partnerships and trusts.

(a) For an association, such as a partnership, to qualify to hold a prospecting permit, lease or exploration license, or any interest therein, a member or authorized attorney-in-fact shall submit the following:

(1) A signed statement setting forth (i) The names, addresses, and citizenship of all members owning or controlling 10 percent or more of the association or partnership; (ii) the names of the members authorized to act on behalf of the association or partnership; (iii) that the association or partnership's acreage holdings for the particular mineral concerned do not exceed the acreage holdings for that mineral; and (iv) that the acreage holdings of any member owning more than 10 percent of the association or partnership do not exceed that allowed.

(2) A copy of the articles of the association or partnership.

(b) In order for a trust to hold prospecting permits or leases or any interest therein on behalf of a beneficiary, the guardian or trustee shall submit the following:

(1) A signed statement setting forth (i) The citizenship of the beneficiary; (ii) the guardian or trustee's own citizenship; (iii) the grantor's citizenship, if the trust is revocable; and (iv) that the acreage holdings of the beneficiary, the guardian or trustee, or the grantor, if the trust is revocable, do not exceed that allowed.

(2) A copy of the court order or other document authorizing or creating the trust or guardianship.

§ 3502.2-4 Corporations.

For a corporation to qualify to hold a prospecting permit, lease, or exploration license, or any interest therein, an officer or authorized attorney-in-fact shall submit a signed statement setting forth:

(a) The State in which the corporation is incorporated;

(b) The names and citizenship of any stockholder owning or controlling more than 10 percent of the stock of the corporation;

(c) The names of the officers authorized to act on behalf of the corporation;

(d) That the corporation's acreage holdings, and those of any stockholder identified under paragraph (b) of this section, do not exceed that allowed; and

(e) The percentage of stock owned, held or controlled by citizens of a foreign country or persons with addresses outside the United States, if greater than 10 percent.

§ 3502.2-5 Heirs and devisees.

(a) If an applicant for a permit, an applicant for a preference right lease or a successful bidder to a competitive lease dies before the permit or lease is issued, the permit or lease shall be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his/her name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms;

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased and are his/her only heirs or devisees; and

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3502.2-2 of this title.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3502.2-2 of this title, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

(b) If a permittee or lessee dies, the executor or administrator of the estate shall be recognized as the record title holder of the permit or lease if probate has not been completed; and if probate has been completed, or is not required, the heirs or devisees shall be so recognized, provided that in all cases, the evidence required in paragraph (a) of this section has been filed.

§ 3502.2-6 Attorneys-in-fact.

An attorney-in-fact shall submit evidence of his/her authority to act on behalf of the applicant. The applicant shall submit a separate statement as to qualifications and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-in-fact to make or to execute such statements.

§ 3502.3 Other parties in interest.

If the applicant is not the sole party in interest to a permit or lease, he/she shall submit with his/her application the names of all other parties who hold or will hold any interest in the application or in the permit or lease, when issued. All interested parties shall furnish appropriate evidence of their qualifications to hold such permit or lease interest.

Subpart 3503—Fees, Rentals and Royalties

§ 3503.1 Payments.

§ 3503.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the

Service, such payments may also be made by electronic funds transfer.

§ 3503.1-2 Where remitted.

(a)(1) All filing fees and all first-year rentals and all bonuses for leases issued under Group 3500 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and all other payments for leases shall be paid to the Service.

(b) All royalties on producing leases and all payments under leases in their minimum production period shall be paid to the Service.

(c) All payments paid to the Service shall be sent to: Minerals Management Service, Royalty Management Program/BRASS, Box 5640, Denver, CO 80217.

§ 3503.2 Production royalties, minimum royalties and overriding royalties.

§ 3503.2-1 Production royalty rates.

Production royalty rates shall be set out in a separate schedule attached to and made a part of all leases and shall be determined on an individual case basis by the authorized officer prior to lease offering. For leases offered competitively, the rates shall be set out in the notice of lease sale. For leases issued noncompetitively, the schedule shall be sent to the prospective lessee for concurrence and signature prior to lease issuance.

§ 3503.2-2 Minimum production and minimum royalty.

(a) Each lease issued on or after the effective date of these regulations shall require a minimum annual production or the payment of minimum royalty in lieu of production for any particular lease year, beginning with the sixth lease year. Minimum royalty payments shall be credited to production royalties for that year only.

(b) Leases renewed or readjusted on or after the effective date of these regulations shall require a minimum annual production or the payment of minimum royalty in lieu of production for any particular lease year, beginning with the first full year of the readjusted or renewed lease. Minimum royalty payments shall be credited to production royalties for that year only.

(c) On or after the effective date of these regulations, the rate of the minimum royalty in lieu of production described in paragraphs (a) and (b) of this section shall be $3 per acre or fraction thereof per year, payable in advance.

(d) Hardrock mineral leases or development or operating agreements which are subject to escalating rentals are exempt from these minimum production and minimum royalty requirements.

§ 3503.2-3 Overriding royalties.

(a) Any overriding royalty interest created by assignment or otherwise shall be subject to the requirement, that if the total of the overriding royalty interest at any time exceeds 1 percent of the gross value of the output at the point at which royalty is assessed, it shall be subject to reduction or suspension by the authorized officer to a total of not less than 1 percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order to: (1) Prevent premature abandonment; or (2) make possible the economic mining of marginal or low grade deposits. Where there is more than 1 overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the authorized officer.

§ 3503.2-4 Waiver, suspension, or reduction of rental, minimum royalty or royalties.

(a) In order to encourage the greatest ultimate recovery of the leased minerals, and in the interest of conservation, whenever the authorized officer determines it is necessary to promote development or finds that leases cannot be successfully operated under the terms provided therein, the rental or minimum royalty payments may be waived, suspended or reduced, or the rate of royalty reduced.

(b) An application for any of the above benefits shall be filed in duplicate in the proper BLM office. The application shall contain the serial number of the lease, the name of the record title holder, the operator or sublessee and a description of the lands by legal subdivision in addition to the following information:

(1) Each application shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months immediately preceding the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(2) Each application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products and all facts showing whether the mines can be successfully operated under the royalty or rental fixed in the lease. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to anyone other than the United States, the amounts so paid and efforts made to reduce them.

(3) The applicant shall also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to aggregate not in excess of one-half the royalties paid to the United States.

§ 3503.3 Suspensions.

§ 3503.3-1 Suspension of operations and production.

(a) The authorized officer may, in he interest of conservation, order or agree to a suspension of operations nd production.

(b) Applications by lessees for suspensions of operations and production shall be filed in duplicate in the proper BLM office and shall set forth why it is in the interest of conservation to suspend operations and production.

(c) The term of any lease shall be extended by adding thereto any period of suspension of operations and production during such term.

(d) A suspension shall take effect as of the date specified by the authorized officer. Rental and minimum annual production shall be suspended during any period of suspension of operations and production beginning with the first day of the lease month on which the suspension of operations and production becomes effective, or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum annual production shall end on the first day of the lease month in which operations or production is resumed, or upon expiration of the suspension, whichever occurs first. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the lease.

(e) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which a suspension of operations and production is directed or granted by the authorized officer.

§ 3503.3-2 Suspension of operations.

(a) The authorized officer may, upon application of the lessee, suspend operations on a lease issued under the regulations in Group 3500 of this title when marketing conditions are such that leases cannot be operated except at a loss.

(b) Application for suspension shall be submitted in duplicate to the proper BLM office and shall contain sufficient information to establish that the lease cannot be operated except at a loss.

(c) A suspension of operations does not affect the term of the lease or the annual rental payment.

(d) A suspension shall take effect as of the date specified by the authorized officer. Minimum annual production shall be suspended during any period of suspension of operations beginning with the first day of the lease month on which the suspension becomes effective, or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of minimum annual production shall end on the first day of the lease month in which operations are resumed, or upon expiration of the suspension, whichever occurs first.

(e) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which a suspension of operations is granted by the authorized officer.

Subpart 3504—Bonds

§ 3504.1 Bonding requirements.

§ 3504.1-1 When filed.

Prior to the issuance of a permit or lease, the applicant shall be required to submit a surety or personal bond as described in this subpart.

§ 3504.1-2 Where filed.

All bonds shall be filed in the proper BLM office on an approved form. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Nationwide bonds may be filed in any Bureau State office.

§ 3504.1-3 Surety bonds and personal bonds.

(a) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of the Treasury Circular No. 570, any supplemental circulars or any replacements).

(b) Personal bonds shall be accompanied by: (1) Cash; (2) cashier's check; (3) certified check; or (4) negotiable U.S. Treasury bonds of a value equal to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of the lease or permit.

§ 3504.1-4 Individual permit and lease bonds.

Individual permit and lease bond amounts shall be established on a case by case basis by the authorized officer. Minimum bonding requirements are set forth in the pertinent regulations for specific minerals.

§ 3504.1-5 Statewide and nationwide bonds.

(a) In lieu of separate bonds for each lease or permit, a lessee or permittee may furnish a bond in an amount of not less than $25,000, as determined by the authorized officer, to cover all leases and permits for a specific mineral in any 1 State.

(b) In lieu of separate bonds for each lease or permit, a lessee or permittee may furnish a bond in the amount of not less than $75,000, as determined by the authorized officer, to cover all leases and permits for a specific mineral nationwide.

§ 3504.1-6 Change in bond coverage.

The authorized officer may elect to increase or decrease the amount of any bond to be issued or any outstanding bond when a change in coverage is determined appropriate, except no bond may be reduced below the established minimum amount for that mineral.

§ 3504.2 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, upon penalty of cancellation of all of the leases or permits covered by such bond, the principal shall within 6 months after notice, or within such shorter period as may be fixed by the authorized officer, either post a new bond or increase the existing bond to the amount previously held. In lieu thereof, the principal may within that time file separate or substitute bonds for each lease or permit.

§ 3504.3 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all the terms and conditions of the lease or permit have been met.

Subpart 3506—Assignments and Subleases

§ 3506.1 Permits and leases subject to assignment or sublease.

Any prospecting permit or lease may be assigned or subleased in whole or in part to any person, association, or corporation qualified to hold such lease or permit.

§ 3506.2 Filing fees.

To be accepted for filing, each instrument of assignment of record title, operating rights and overriding royalty assignments shall be accompanied by a nonrefundable filing fee of $25. Any instrument not accompanied by the filing fee shall not be accepted.

§ 3506.3 Filing requirements.

§ 3506.3–1 Record title assignments.

(a) A separate instrument of assignment shall be filed in triplicate for each permit or lease. The instrument shall be filed within 90 days of final execution and shall contain:

(1) Name and current address of assignee;

(2) Interest held by assignor and interest to be assigned;

(3) The serial number of the affected permit or lease and a description of the lands to be assigned as described in the permit or lease;

(4) Percentage of overriding royalties retained; and

(5) Date and signature of assignor.

(b) The assignee shall provide a single copy of the request for approval of assignment which shall contain:

(1) Statement of qualifications and holdings as required by subpart 3502 of this title;

(2) Date and signature of assignee; and

(3) Filing fee as required by § 3506.2 of this title.

(c) The approval of an assignment of all interests in a specific portion of the lands in a lease shall create a separate lease which shall be given a current serial number.

§ 3506.3–2 Operating rights.

One copy of a sublease or an operating rights assignment shall be filed within 90 days from the date of final execution and shall contain the operating agreement between the lessee and operator. The operator shall file a request for approval as described in § 3506.3–1(b) of this title. The agreement shall be approved by formal decision.

§ 3506.3–3 Overriding royalty interests.

All overriding royalty interest assignments shall be filed for record purposes within 90 days from the date of execution, but no formal approval shall be given. Any such assignment shall be deemed to be valid provided it is accompanied by the assignee's statement of qualifications as provided for in subpart 3502 of this title, and filing fee as required by § 3506.2 of this title.

§ 3506.4 Permit or lease account status.

The authorized officer shall not approve an assignment of a permit or lease unless the account under the permit or lease is in good standing, or the assignee and his/her surety accepts, in writing, all outstanding liabilities of the assignor which have accrued, whether known or unknown, under the permit or lease.

§ 3506.5 Bonds.

§ 3506.5–1 Coverage.

If the permittee or lessee has been required to maintain a bond, then prior to approval of the assignment, the assignee shall be required to furnish a new bond in the same amount, or, in lieu thereof, consent of the surety on the present bond to the substitution of the assignee as principal. (See subpart 3504)

§ 3506.5–2 Continuing responsibility.

The assignor and his/her surety shall continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the assignment. If the assignment is not approved, the assignor's obligation to the United States shall continue as though no such assignment had been filed for approval. After the effective date of approval the assignee and his/her surety shall be responsible for the performance of all permit or lease obligations notwithstanding any terms in the assignment to the contrary, or after the effective date of approval of the sublease, the sublessor and sublessee shall be jointly and severally liable for the performance of all permit or lease obligations, notwithstanding any terms in the sublease to the contrary.

§ 3506.6 Effective date.

An assignment or sublease shall take effect so far as the United States as lessor is concerned the first day of the month following its final approval by the Bureau, or if the assignee requests, the first day of the month of the approval.

§ 3506.7 Extensions.

The approval of an assignment or sublease shall not extend the life of the permit or the readjustment or renewal periods of the lease.

Subpart 3507—Fractional and Future Interest Permits and Leases

§ 3507.1 Issuance of prospecting permits and leases.

§ 3507.1–1 Prospecting permits.

A prospecting permit for a present fractional interest in mineral deposits acquired by the United States may be issued by the authorized officer.

§ 3507.1–2 Leases.

(a) Noncompetitive leases for future or fractional interests in lands believed, but not known, to contain mineral deposits, may be issued by the authorized officer whenever he/she finds it to be in the public interest.

(b) Noncompetitive leases for any future interest(s) in lands which are a part of an existing mining operation may be issued to the mine owner or operator by the authorized officer whenever he/she finds it to be in the public interest. Such leases shall be conditioned upon payment by the lessee of the fair market value of the mineral deposit at the time of vesting of title to the mineral in the United States.

§ 3507.2 Forms and applications.

No specific application form is required, but the application shall contain the same information required of an applicant for the specific mineral concerned.

§ 3507.3 Terms and conditions.

Permit and lease terms and conditions shall be those provided in this group for the particular mineral.

§ 3507.4 Consent of agency or bureau.

A prospecting permit for a present fractional interest in mineral deposits, or a lease for a fractional or future interest in mineral deposits acquired by the United States, may be issued by the authorized officer only with the consent of the surface management agency.

§ 3507.5 Where filed and filing fee.

The application shall be filed in triplicate in the proper BLM office and shall be accompanied by a nonrefundable filing fee of $25.

§ 3507.6 Qualifications.

Compliance with subpart 3502 of this title is required.

§ 3507.7 Evidence of ownership.

§ 3507.7–1 Present fractional interest.

An applicant for a present fractional interest permit or lease shall have a present interest in the minerals. If the applicant does not own all of the mineral interests not owned by the United States or all of the operating rights therein, the application shall show the extent of the applicant's rights and the names of the other owners of such rights.

§ 3507.7–2 Future interest.

An application for a whole or fractional future interest prospecting permit or lease shall include evidence of title to the present interest in the mineral deposit, which may be in the form of a certified abstract of title or certificate of title. If the applicant is the owner of the operating rights to the non-federal minerals and acquired such rights under a lease or contract with the owner of such minerals, the application shall be accompanied by 3 copies of such lease or contract. A whole or fractional future interest lease shall be issued only to an applicant who owns all or substantially all of the present operating rights to the non-federal minerals as fee owner, lessee or operator holding such rights.

§ 3507.8 Effective date of future interest leases.

Future interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3507.9 Rejection of application.

(a) An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals shall be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at the time shall automatically lapse and thereafter only applications for a present interest lease shall be considered.

(b) Unless the authorized officer determines it to be in the public interest to do otherwise, a lease or prospecting permit shall not issue to one who, with the Federal interest applied for, would control less than 50 percent of the operating rights, and the application for such a lease or permit shall be rejected.

Subpart 3508—Mineral Lease Exchange

§ 3508.0–1 Purpose.

This subpart authorizes a mineral prospecting permittee, or mineral lessee, to relinquish the lease to be acquired under preference right, or an existing mineral lease, in exchange for a mineral lease of other lands of comparable value for any leasable or hardrock mineral when the Secretary concludes that operations on the preference right or outstanding lease would not be in the public interest, and that operations on the lands leased in exchange would be in the public interest.

§ 3508.0–7 Scope.

(a) The regulations in this subpart and subpart 3435 of this title, which cover provisions related to exchanges involving the issuance of coal leases, coal lease bidding rights or coal lease modifications, may be used in exchanges of one mineral for another.

(b) In the case of a conflict between this subpart and the provisions of subpart 3435 of this title, the provisions governing the lease or lease interest to be issued shall control.

§ 3508.1 When exchange provisions apply.

(a) The provisions of this subpart shall be invoked by the authorized officer notifying the preference right lease applicant or lessee that he/she is prepared to consider exchange of a mineral lease for relinquishment of leasing rights on the lands described in the notice.

(b) The authorized officer may seek the exchange of any part or all of the lands under preference right lease application or lease. More than 1 preference right lease application or lease may be considered. The effect of a partial or multiple exchange shall be taken into account by the authorized officer in determining whether such an exchange is in the public interest.

(c) An exchange mineral lease shall not be issued unless the authorized officer finds, after completing the procedures in this subpart, that the exchange is in the public interest.

(d) For the purposes of this subpart, an exchange shall be considered in the public interest if the authorized officer finds that the benefits of production from the lease or preference right lease would not outweigh the adverse effects, or threat of damage or destruction to agricultural production potential, or scenic, biological, geologic, historic or other public interest values from lease operations, and if the authorized officer finds the lands proposed for exchange free from hazardous waste as defined under the authorities of the Clean Water Act, Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act. In exercising his/her discretion to exchange mineral leasing values in the public interest, the authorized officer shall consider, but is not limited to consideration of, these elements of the public interest: Recreational use; archeological or historic values; threatened or endangered species; proximity of residential or urban areas; study for potential inclusion in the wilderness or wild and scenic rivers systems; and value for public uses, including public highways, airports and rights-of-way.

§ 3508.2 Exchange procedures.

(a) The authorized officer shall notify the preference right lease applicant or lessee when he/she is prepared to consider an exchange of other mineral leasing values for a tract under lease application or lease. The exchange notice shall:

(1) State why the authorized officer believes an exchange would be in the public interest;

(2) Provide that the lease applicant or lessee shall respond by indicating whether he/she is willing to negotiate for an exchange under this subpart; and

(3) Contain a description of the lands for which the authorized officer would offer exchange terms. The preference right lease applicant's or lessee's reply may describe the lands on which the lease applicant or lessee would accept an exchange lease.

(b) A preference right lease applicant shall show the timely submittal of a mineral preference right lease application.

(c) If the preference right lease applicant demonstrates to the Secretary that the applicant has a preference right to a lease, the authorized officer may, in lieu of issuing a lease on the preference right, negotiate for the selection of appropriate exchange lands and establish lease terms on the lands to be leased in exchange.

(d)(1) The lands leased in exchange shall, to the satisfaction of the preference right lease applicant or lessee and the authorized officer, be a lease tract containing a deposit of leasable or hardrock minerals of comparable value. A lease tract shall be determined "of comparable value" for exchange purposes when the authorized officer concludes that the value of the more valuable tract is less than 10 percent greater than the value of the less valuable tract.

(2) The lands covered by an exchange lease shall be subject to leasing under the authorities contained in § 3500.0-3 of this title.

(e) The exchange right shall be equal to the fair market value of the preference right or lease to be relinquished. A reply to the authorized officer's notice by the preference right lease applicant or lessee which indicates a willingness to consider an exchange also shall indicate a willingness to provide geologic and economic data to enable the authorized officer to determine the fair market value of the relinquished preference right or lease.

(f) After the prospective exchange lessee and the authorized officer agree on the lands to be leased in exchange, a notice of the proposed exchange shall be published in the FEDERAL REGISTER and in a newspaper(s) in the county(s) where both the preference right or lease lands and the proposed exchange lease lands are located. The notice shall include:

(1) The time and place of a public hearing(s);

(2) The authorized officer's preliminary findings that the exchange is in the public interest; and

(3) A request for public comments on the merits of the proposed exchange.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3508.3 Issuance of lease.

(a) If, after public hearing, the authorized officer determines by written decision that issuance of the exchange lease is in the public interest, he/she shall establish stipulations for operations on the exchange lease.

(b) The exchange lease shall be subject to the relevant provisions of group 3500 and standard lease terms thereunder and shall contain:

(1) A statement that the lessee quitclaims and relinquishes any right or interest in the preference right lease application or lease exchanged; and

(2) A statement setting forth the authorized officer's finding that the lease issuance is in the public interest.

Subpart 3509—Relinquishment, Termination, Expiration, and Cancellation

§ 3509.1 Relinquishment.

§ 3509.1-1 Prospecting permits.

The permittee may relinquish the entire prospecting permit or any legal subdivision thereof. A partial relinquishment shall clearly describe the lands surrendered and give the exact acreage relinquished. A relinquishment shall be filed in the proper BLM office. Upon its acceptance by the authorized officer, the relinquishment shall be effective as of the date it is filed. Such lands, if otherwise available, shall be subject to the filing of new applications immediately upon notation of the relinquishment on the official status records.

§ 3509.1-2 Leases.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may relinquish the entire lease or any legal subdivision thereof. A partial relinquishment shall clearly describe the lands surrendered and the exact area thereof. A relinquishment shall be filed in the proper BLM office. Upon its acceptance by the authorized officer, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his/her surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3509.2 Termination of prospecting permits.

A prospecting permit shall automatically terminate for failure to pay rental on or before the anniversary date of the permit. The termination of the permit for failure to pay rental shall be noted on the official status records of the proper BLM office. Until such notation is made, the lands covered by the permit shall not be available for filing of any new permit applications. Applications for such permits filed prior to such notation shall be rejected.

§ 3509.3 Expiration.

§ 3509.3-1 Prospecting permits.

The permit shall expire at the end of its initial or extended term, as applicable, without notice to the permittee. However, a permit may be extended if the permittee timely files an application for extension (See §§ 3512.9-2, 3532.9-2, 3552.9-2 and 3562.9-2). Upon expiration, the lands, if otherwise available and if no preference right lease application has been filed by the prior permit holder, shall be subject to filing of new applications for prospecting permits 60 days thereafter.

§ 3509.3-2 Leases.

(a) Hardrock, sodium, sulphur and asphalt leases shall expire either at the end of the lease term, if a timely application for lease renewal is not timely filed in accordance with applicable regulations, or at the time a timely application for renewal is rejected.

(b) Potassium, phosphate and gilsonite leases continue for so long as the lessee complies with the lease terms and conditions which are subject to periodic readjustment in accordance with applicable regulations.

§ 3509.4 Cancellation.

§ 3509.4-1 Prospecting permits.

(a) Except as provided for in § 3509.2 of this title, if a permittee fails to comply with the provisions of the law or the regulations issued thereunder, or defaults with respect to any of the terms or stipulations of the permit and such failure or default continues for 30 days after service of written notice thereof by the authorized officer, the permit may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

(b) The cancellation of a permit for cause shall be noted on the official status records of the proper BLM office. Until such notation is made, the lands covered by the permit shall not be available for filing of like applications for a permit. Applications for such permits filed prior to such notation shall be rejected.

§ 3509.4-2 Leases.

(a) If the lessee fails to comply with the provisions of the Act, or of the general regulations promulgated and in force on the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof, or defaults in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the Act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

(b) If any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the Act, the authorized officer shall give the lessee 30 days to remedy the violation or to show cause why the Attorney General should not be requested to institute proceedings in a court of competent jurisdiction to:

(1) Cancel the lease;

(2) Forfeit the interest so owned; or

(3) Compel disposal of the interest so owned or controlled.

(c) If a lease is issued improperly, it shall be subject to administrative cancellation.

§ 3509.4-3 Bona fide purchasers.

(a) A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers shall be charged with constructive notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease.

(b) Prompt action shall be taken to dismiss, as a party to any proceedings with respect to a violation by a predecessor of any provisions of the Act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a bona fide purchaser. If, during any such proceeding, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments or rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or of the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

PART 3510—PHOSPHATE

Subpart 3510—Phosphate Leasing: General

Sec.

3510.0-3 Authority.
3510.1 Leasing procedures.
3510.2 Other applicable regulations.
3510.2-1 General leasing regulations.
3510.2-2 Special areas.
3510.3 Allowable acreage holdings.

Subpart 3511—Lease Terms and Conditions

3511.1 Applicability of lease terms and conditions.
3511.2 Rental and royalty.
3511.2-1 Rental.

Sec.
3511.2-2 Production royalty.
3511.3 Duration of lease.
3511.4 Readjustment.
3511.5 Use of other minerals.
3511.6 Bonds.
3511.7 Special stipulations.
3511.8 Other applicable regulations.

Subpart 3512—Phosphate Prospecting Permits

3512.1 Areas subject to prospecting.
512.2 Rights conferred by issuance of prospecting permits.
512.3 Application for prospecting permit.
512.3-1 Filing requirements.
512.3-2 Contents of application.
512.3-3 Exploration plans.
512.3-4 Rejection of application.
512.4 Determination of priorities.
512.4-1 Regular filings.
512.4-2 Simultaneous filings.
512.5 Amendment to application.
512.6 Withdrawal of application.
512.7 Permit bonds.
512.8 Terms and conditions of permit.
512.8-1 Duration of permit.
512.8-2 Dating of permits.
512.8-3 Annual rental.
512.8-4 Special stipulations.
512.9 Prospecting permit extensions.
512.9-1 Conditions for, and duration of, extensions.
12.9-2 Application for extension.
12.9-3 Effective date.

Subpart 3513—Preference Right Lease

13.1 Application for preference right lease.
13.1-1 Filing requirements.
13.1-2 Contents of application.
13.2 Review of application.
13.2-1 Preference right determination.
13.2-2 Surface management agency.
13.3 Issuance of lease.
13.4 Rejection of application.

Subpart 3514—Exploration License

4.0-3 Authority.
4.1 Exploration license.
4.2 Regulations applicable.
4.3 Exploration plan.
4.4 Notice of exploration.
4.4-1 Contents of notice.
4.4-2 Publication and posting of notice.
4.4-3 Notice of participation.
4.4-4 Decision on plan and participation.
4.5 Submission of data.
4.6 Modification of exploration plan.

Subpart 3515—Competitive Leasing

5.1 Lands subject only to competitive leasing.
Sec.
3515.2 Surface management agency.
3515.3 Sale procedures.
3515.3-1 Publication and posting of notice.
3515.3-2 Contents of notice.
3515.3-3 Detailed statement.
3515.4 Bid opening.
3515.5 Award of lease.
3515.6 Rejection of bid.

Subpart 3516—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

3516.1 Lands subject to lease.
3516.2 Special requirements.
3516.3 Filing requirements.
3516.4 Surface management agency.
3516.5 Payment of bonus.
3516.6 Terms and conditions of lease.

Subpart 3517—Use Permits

3517.1 Use permits.
3517.1-1 Applications.
3517.1-2 Rental.
3517.1-3 Additional requirements.
3517.2 Approval.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of March 3, 1933, as amended (47 Stat. 1487); Sec. 10, Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of October 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15222, Apr. 22, 1986, unless otherwise noted.

Subpart 3510—Phosphate Leasing: General

§ 3510.0-3 Authority.

Authority for leasing phosphate is shown under § 3500.0-3 (a) and (c) of this title.

§ 3510.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of phosphate, including associated and related minerals, found on lands available for leasing. The regulations provide for this in the following manner:

(a) *Prospecting permits* allow the permittee to explore for deposits of phosphate.

(b) *Preference right leases* are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of phosphate under the permit.

(c) *Exploration licenses* allow the licensee to explore known deposits of phosphate to obtain data but do not grant the licensee any preference or other right to a lease.

(d) *Competitive leases* are issued for known deposits of phosphate and allow the lessee to mine the deposit.

(e) *Fringe acreage leases* are issued noncompetitively for known deposits of phosphate on Federal lands adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) *Lease modifications* are used to add known deposits of phosphate to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3510.2 Other applicable regulations.

§ 3510.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of part 3500 of this title only to the cross-referenced regulations.

§ 3510.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in part 3580 of this title are applicable, the regulations in this part and part 3500 of this title shall govern the leasing of phosphate in those national recreation areas and those patented lands.

§ 3510.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 20,480 acres under prospecting permit and lease in the United States.

Subpart 3511—Lease Terms and Conditions

§ 3511.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under part 3510 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of phosphate, phosphate rock and associated or related minerals.

§ 3511.2 Rental and royalty.

§ 3511.2-1 Rental.

(a) Each lease shall provide for the payment of rental annually on or before the anniversary date of the lease. The rental for each acre or fraction thereof shall be at the rate of not less than 25 cents for the first lease year, 50 cents for the second and third lease years, and $1 for each and every year thereafter. The annual rental payment shall not be less than $20. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3511.2-2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2-1 of this title but not less than 5 per centum of the gross value of the output of phosphates or phosphate rock and associated or related minerals.

§ 3511.3 Duration of lease.

The lease shall be issued for an indeterminate period subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3511.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless within 60 days after receiving them, the lessee files an objection to the readjusted terms and conditions or relinquishes the lease. The authorized officer shall issue a decision responding to the objections, and if the response is adverse to the lessee, the decision shall grant the right of appeal under part 4 of this title. The effective date of the readjustment shall not be affected by the filing of objections or the filing of a notice of appeal.

(c) Except as provided in this paragraph, the readjusted terms and conditions shall be effective pending a response to the objections or the outcome of the appeal provided for in paragraph (b) of this section unless the authorized officer provides otherwise. Upon the filing of an objection or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals shall be suspended pending the outcome of the objection or appeal. However, any such increased royalties, minimum royalties and rentals shall accrue during the pendency of the objection or appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the objection or on appeal, the accrued balance, plus interests at the rate specified for late payment by the Service shall be payable (See part 3590). Pending the decision on the objection or the appeal, the royalties, minimum royalties and rentals shall be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

§ 3511.5 Use of other minerals.

Any phosphate lease issued pursuant to this subpart shall provide that the lessee may use deposits of silica, limestone or other rock on the leased lands in the processing or refining of the phosphates, phosphate rock and associated or related minerals mined from the leased lands upon payment of royalty as set forth in the royalty schedule attached to the lease.

§ 3511.6 Bonds.

Prior to issuance of a lease, the applicant shall furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000. (See subpart 3504)

§ 3511.7 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also part 3580)

§ 3511.8 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by subpart 3509 of this title.

(e) Exploration and mining are covered by part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3512—Phosphate Prospecting Permits

§ 3512.1 Areas subject to prospecting.

A prospecting permit may be issued for any unclaimed, undeveloped area of available public domain or acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of phosphate. Discovery of a valuable deposit of phosphate within the term of the permit entitles the permittee to a preference right lease.

§ 3512.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of phosphate in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3512.3 Application for prospecting permit.

§ 3512.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed i triplicate with the proper BLM office

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage i known, and if not known, for the total acreage computed on the basis of 4 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3512.3-2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3512.3-3 Exploration plans.

After an initial review and clearance of the application, but prior to the issuance of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where explora

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tion is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3512.3-4 Rejection of application.

Any application for a prospecting permit which does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3512.4 Determination of priorities.

§ 3512.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3512.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with § 1821.2-3 of this title.

§ 3512.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3512.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3512.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See subpart 3504)

§ 3512.8 Terms and conditions of permit.

§ 3512.8-1 Duration of permit.

Prospecting permits are issued for an initial term of 2 years, and may be extended for an additional period not to exceed 4 years as provided in § 3512.9 of this title. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3512.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3512.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3512.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See part 3580)

§ 3512.9 Prospecting permit extensions.

§ 3512.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 4 years at the discretion of the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3512.9-2 Application for extension:

(a) Filing requirements.

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Applications for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set out in § 3512.9-, of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3512.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3513—Preference Right Lease

§ 3513.1 Application for preference right lease.

§ 3513.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20. (See subpart 3503)

§ 3513.1-2 Contents of application.

(a) The application shall contain statement of qualification and holdings in compliance with subpart 35 of this title.

(b) The application shall contain complete and accurate description of the lands in accordance with § 3501. of this title. The lands shall have bee included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems, the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings, and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-federal lands.

§ 3513.2 Review of application.

§ 3513.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of phosphate. The determination shall be based on the data furnished to the authorized officer by the permittee as required by part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3513.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3513.1-2 of this title.

§ 3513.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of phosphate was discovered.

§ 3513.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of phosphate;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts sufficient to show entitlement to a lease, an applicant shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the lease applicant shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of phosphate was discovered.

Subpart 3514—Exploration License

§ 3514.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3514.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased phosphate deposits to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3514.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under part 2920 of this title shall govern the issuance of exploration licenses.

§ 3514.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3512.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3514.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3514.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3514.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3514.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3514.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3514.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3514.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3515—Competitive Leasing

§ 3515.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable phosphate deposit may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in subparts 3508 and 3516 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3515.2 Surface managment agency.

Prior to competitive lease offering the surface management agency shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3515.3 Sale procedures.

§ 3515.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office

§ 3515.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the phosphate deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3515.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount, and special stipulations for the particular tract;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See part 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3515.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3515.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3515.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3516—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

§ 3516.1 Lands subject to lease.

Lands available for leasing which are known to contain a phosphate deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by a issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3516.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active phosphate mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) Leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3516.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a phosphate deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3516.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3516.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event, shall such p
ment be less than $1 per acre or fr
tion thereof.

§ 3516.6 Terms and conditions of lease.

New leases shall be issued subject
the terms and conditions set out und
subpart 3511 of this title. The term
and conditions of modified leases sha
be the same as in the existing leases.

Subpart 3517—Use Permits

§ 3517.1 Use permits.

A lessee or permittee may be gran
ed a right to use the surface of una
propriated and unentered public lands
not exceeding 80 acres, not include
within the boundaries of a nationa
forest if necessary for the proper ex
traction, treatment or removal of the
mineral deposits. This provision is no
applicable to National Forest System
lands.

§ 3517.1-1 Applications.

Applications for permits to use add
tional lands shall be filed in triplicat
in the proper BLM office. Each appl
cation shall be accompanied by a non
refundable $25 filing fee and the firs
year's rental. The rental paymen
shall not be less than $20.

§ 3517.1-2 Rental.

(a) The annual rental charge for us
of such lands shall not be less than $
an acre or fraction thereof. Paymen
of the rental shall be made on o
before the anniversary date of the
permit and also shall be required o
all use permits issued prior to the ef
fective date of this section.

(b) Any use permit shall terminate
the permittee or lessee fails to pay the
rental within 30 days after service o
written notice thereof by the author
ized officer.

§ 3517.1-3 Additional requirements.

Applications shall set forth the spe
cific reasons why the permittee o
lessee needs any additional lands fo
the use named, describe the lands de
sired in accordance with subpart 350
of this title and also set forth the rea
sons why the lands are desirable and
adapted to the use named, either

point of location, topography or otherwise, and shall assure that they are unoccupied and unappropriated. The application shall also contain an agreement to pay the annual charge prescribed in the permit.

§ 3517.2 Approval.

A use permit shall be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests, in writing, that it be dated the first day of the month of issuance.

PART 3520—SODIUM

Subpart 3520—Sodium Leasing: General

Sec.
3520.0-3 Authority.
3520.1 Leasing procedures.
3520.2 Other applicable regulations.
3520.2-1 General leasing regulations.
3520.2-2 Special areas.
3520.3 Allowable acreage holdings.

Subpart 3521—Lease Terms and Conditions

3521.1 Applicability of lease terms and conditions.
3521.2 Rental and royalty.
3521.2-1 Rental.
3521.2-2 Production royalty.
3521.3 Duration of lease.
3521.4 Bonds.
3521.5 Special stipulations.
3521.6 Other applicable regulations.

Subpart 3522—Sodium Prospecting Permits

3522.1 Areas subject to prospecting.
3522.2 Rights conferred by issuance of prospecting permits.
3522.3 Application for prospecting permit.
3522.3-1 Filing requirements.
3522.3-2 Contents of application.
3522.3-3 Exploration plans.
3522.3-4 Rejection of application.
3522.4 Determination of priorities.
3522.4-1 Regular filings.
3522.4-2 Simultaneous filings.
3522.5 Amendment to application.
3522.6 Withdrawal of application.
3522.7 Permit bonds.
3522.8 Terms and conditions of permit.
3522.8-1 Duration of permit.
3522.8-2 Dating of permits.
3522.8-3 Annual rental.
22.8-4 Special stipulations.

Sec.

Subpart 3523—Preference Right Lease

3523.1 Application for preference right lease.
3523.1-1 Filing requirements.
3523.1-2 Contents of application.
3523.2 Review of application.
3523.2-1 Preference right determination.
3523.2-2 Surface management agency.
3523.3 Issuance of lease.
3523.4 Rejection of application.

Subpart 3524—Exploration License

3524.0-3 Authority.
3524.1 Exploration license.
3524.2 Regulations applicable.
3524.3 Exploration plan.
3524.4 Notice of exploration.
3524.4-1 Contents of notice.
3524.4-2 Publication and posting of notice.
3524.4-3 Notice of participation.
3524.4-4 Decision on plan and participation.
3524.5 Submission of data.
3524.6 Modification of exploration plan.

Subpart 3525—Competitive Leasing

3525.1 Lands subject only to competitive leasing.
3525.2 Surface management agency.
3525.3 Sale procedures.
3525.3-1 Publication and posting of notice.
3525.3-2 Contents of notice.
3525.3-3 Detailed statement.
3525.4 Bid opening.
3525.5 Award of lease.
3525.6 Rejection of bid.

Subpart 3526—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

3526.1 Lands subject to lease.
3526.2 Special requirements.
3526.3 Filing requirements.
3526.4 Surface management agency.
3526.5 Payment of bonus.
3526.6 Terms and conditions of lease.

Subpart 3527—Use Permits

3527.1 Use permits.
3527.1-1 Applications.
3527.1-2 Rental.
3527.1-3 Additional requirements.
3527.2 Approval.

Subpart 3528—Lease Renewals

3528.1 Applications.
3528.2 Bonds.
3528.3 Failure to apply for renewal.
3528.4 Lease terms and conditions.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30

U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947 (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15228, Apr. 22, 1986, unless otherwise noted.

Subpart 3520—Sodium Leasing: General

§ 3520.0-3 Authority.

Authority for leasing deposits of chlorides, sulphates, carbonates, borates, silicates or nitrates of sodium, hereinafter referred to as deposits of sodium or any sodium compound, is shown under § 3500.0-3 (a) and (c) of this title.

§ 3520.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of sodium or any sodium compound found on lands available for leasing. The regulations provide for this in the following manner:

(a) *Prospecting permits* allow the permittee to explore for deposits of sodium or any sodium compound.

(b) *Preference right leases* are issued to the holders of prospecting permits who demonstrate the discovery of a valuable deposit of sodium or any sodium compound under the permit and that the lands covered by the permit are chiefly valuable therefore.

(c) *Exploration licenses* allow the licensee to explore known deposits of sodium or any sodium compound to obtain data but do not grant the licensee any preference or other right to a lease.

(d) *Competitive leases* are issued for known deposits of sodium or any sodium compound and allow the lessee to mine the deposit.

(e) *Fringe acreage leases* are issued noncompetitively for known deposits of sodium or any sodium compoun adjacent to existing mines on non-Federal lands which can only be mined a part of the existing mining operatio

(f) *Lease modifications* are used t add known deposits of sodium or an sodium compound to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3520.2 Other applicable regulations.

§ 3520.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in part 3500 of this title include, but are not limited to such matters as multiple mineral development, environmental review other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of part 3500 of this title only to the cross-referenced regulations.

§ 3520.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California and as applicable, supplements this part. Except where specific regulations in part 3580 of this title are applicable the regulations in this part and part 3500 of this title shall govern the leasing of deposits of sodium or any sodium compound in those national recreation areas and those patented lands.

§ 3520.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 5,120 acres under prospecting permit and lease in any 1 State, except that, where the Secretary determines pursuant to 30 U.S.C. 184(b)(2) that it is necessary to secure the economic mining of sodium compounds, holdings may equal 15,360 acres.

Subpart 3521—Lease Terms and Conditions

§ 3521.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under part 3520 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of sodium, sodium compounds and other related products, including, but not limited to, potassium and potassium compounds.

§ 3521.2 Rental and royalty.

§ 3521.2-1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years and $1 for each and every year thereafter. Rental is payable annually on or before January 1. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3521.2-2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2-1 of this title, but at not less than 2 per centum of the quantity or gross value of the output of sodium compounds and related products at the point of shipment to market.

§ 3521.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter. (See subpart 3528)

§ 3521.4 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See subpart 3504)

§ 3521.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also part 3580)

§ 3521.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by subpart 3509 of this title.

(e) Exploration and mining are covered by part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

Subpart 3522—Sodium Prospecting Permits

§ 3522.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain or acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of sodium or any sodium compound. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of any of these sodium compounds, and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3522.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of sodium or any sodium compound in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3522.3 Application for prospecting permit.

§ 3522.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of that form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof, made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3522.3-2 Contents of application.

Each application shall be typewr ten, or printed plainly in ink; manual ly signed in ink and dated by the ap plicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant qualifications and holdings. (See subpart 3502); and

(c) A complete and accurate land description in compliance with subpar 3501 of this title. The application shal not include more than 2,560 acres in a reasonably compact form.

§ 3522.3-3 Exploration plans.

After initial review and clearance o the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applican to file an exploration plan in tripl cate, reasonably designed to determin the existence or workability of the deposit. The exploration plan shall, inso far as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsibl for operations under the plan and t whom notices and orders are to be delivered;

(b) A brief description, includin maps, of geologic, water, vegetatio and other physical factors, and th distribution, abundance, and habita of fish and wildlife, particularl threatened and endangered specie that may be affected by the propose operation within the area where exploration is to be conducted, and th present land use within and adjacen to the area;

(c) A narrative description showing

(1) The method of exploration an types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wild life or their habitat and other natura resources and hazards to public healt and safety, including specific action necessary to meet all applicable law and regulations;

(3) The method for plugging dril holes; and,

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3522.3-4 Rejection of application.

Any application for a prospecting permit which does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3522.4 Determination of priorities.

§ 3522.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3522.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with subpart 1821 of this title.

§ 3522.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3522.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3522.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See subpart 3504)

§ 3522.8 Terms and conditions of permit.

§ 3522.8-1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may not be extended.

§ 3522.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3522.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3522.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also part 3580)

Subpart 3523—Preference Right Lease

§ 3523.1 Application for preference right lease.

§ 3523.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See subpart 3503)

§ 3523.1-2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with subpart 3502 of this title;

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres;

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto; and

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or
ties incidental thereto, on ad
Federal or non-federal lands.

§ 3523.2 Review of application.

§ 3523.2-1 Preference right determi

The authorized officer shall
mine whether the permittee ha
covered a valuable deposit of so
or any sodium compound and wh
the lands are chiefly valuable t
for. The determination shall be
on data furnished to the autho
officer by the permittee as require
part 3590 of this title during the li
the permit and supplemental data
mitted at the request of the au
ized officer to determine the e
and character of the deposit, the
ticipated mining and processing m
ods, the anticipated location, kind
extent of necessary surface dist
ance and measures to be taken to
claim that disturbance.

§ 3523.2-2 Surface management agen

The surface management agenc
other than the Bureau, shall re
the application for preference r
lease in accordance with § 3500.9
part 3580 of this title, as applica
The appropriate surface managem
agency may request supplemental
regarding surface disturbance and
lamation if not otherwise submi
under § 3523.1-2 of this title.

§ 3523.3 Issuance of lease.

The authorized officer shall iss
lease to the holder of a prospec
permit who shows that, within
term of the permit, a valuable dep
of sodium or any sodium compo
was discovered and that the lands
chiefly valuable therefor.

§ 3523.4 Rejection of application.

(a) The authorized officer
reject the application for a prefer
right lease if the authorized office
termines:

(1) That the applicant did not
cover a valuable deposit of sod
and/or the lands are not chiefly va
ble therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of sodium or any sodium compound was discovered and that the lands are chiefly valuable therefor.

Subpart 3524—Exploration License

§ 3524.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3524.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased deposits of sodium or any sodium compound to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3524.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under part 2920 of this title shall govern the issuance of exploration licenses.

§ 3524.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3522.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3524.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3524.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3524.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3524.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3524.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3524.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3524.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3525—Competitive Leasing

§ 3525.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of valuable deposits of sodium or any sodium compound may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in subparts 3508 and 3526 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3525.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3525.3 Sale procedures.

§ 3525.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale also shall be posted for 30 days in the public room of the proper BLM office.

§ 3525.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the sodium deposit or any sodium compound deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3525.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations for the particular tract;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3525.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3525.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3525.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3526—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

§ 3526.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of sodium or any sodium compound that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3526.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3526.3 Filing requirements.

(a) An application shall be filed in triplicate with proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a sodium deposit or any sodium compound deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3526.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and part 3580 of this title.

§ 3526.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3526.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under subpart 3521 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

Subpart 3527—Use Permits

§ 3527.1 Use permits.

A permittee or lessee may be granted a right to use, during the life of the permit or lease, the surface of unoccupied non-mineral public lands, not to exceed 40 acres, that are not included within the boundaries of a national forest, for camp sites, refining works and other purposes connected with, if necessary to, the proper development and use of the deposits covered by the permit or lease.

§ 3527.1-1 Applications.

Applications for permits to use additional lands shall be filed in triplicate in the proper BLM office. No specific form is required. Each application shall be accompanied by a nonrefundable $25 filing fee and the first year's rental. The rental payment shall not be less than $20.

§ 3527.1-2 Rental.

(a) The annual rental charge for use of such lands shall not be less than $1 per acre or fraction thereof. Payment of the rental shall be made on or before the anniversary date of the permit and also shall be required on all use permits issued prior to the effective date of this section.

(b) Any use permit shall terminate if the permittee or lessee fails to pay the required rental within 30 days after service of written notice thereof by the authorized officer.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3527.1-3 Additional requirements.

Applications shall set forth the specific reasons why the permittee or lessee needs the additional lands for the use named, describe the lands desired in accordance with subpart 3501 of this title and also set forth the reasons why the lands are desirable and adapted to the use named, either in point of location, topography or otherwise, and shall assure that they are unoccupied and unappropriated. The application shall also contain an agreement to pay the annual charge prescribed in the permit.

§ 3527.2 Approval.

A use permit shall be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests in writing that it be dated the first day of the month of issuance.

Subpart 3528—Lease Renewals

§ 3528.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction thereof.

§ 3528.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by subpart 3504 of this title.

§ 3528.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3528.1 of this title, the lease shall expire on the last day of the current lease term.

§ 3528.4 Lease terms and conditions.

Each lease, if renewed, shall be issued on a form approved by the Director and shall be effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under subpart 3521 of this title.

PART 3530—POTASSIUM

Subpart 3530—Potassium Leasing: General

Sec.
3530.0-3 Authority.
3530.1 Leasing procedures.
3530.2 Other applicable regulations.
3530.2-1 General leasing regulations.
3530.2-2 Special areas.
3530.3 Allowable acreage holdings.

Sec.

Subpart 3531—Lease Terms and Conditions

3531.1 Applicability of lease terms and conditions.
3531.2 Rental and royalty.
3531.2-1 Rental.
3531.2-2 Production royalty.
3531.3 Duration of lease.
3531.4 Readjustment.
3531.5 Bonds.
3531.6 Special stipulations.
3531.7 Other applicable regulations.

Subpart 3532—Potassium Prospecting Permits

3532.1 Areas subject to prospecting.
3532.2 Rights conferred by issuance of prospecting permits.
3532.3 Application for prospecting permit.
3532.3-1 Filing requirements.
3532.3-2 Contents of application.
3532.3-3 Exploration plans.
3532.3-4 Rejection of application.
3532.4 Determination of priorities.
3532.4-1 Regular filings.
3532.4-2 Simultaneous filings.
3532.5 Amendment to application.
3532.6 Withdrawal of application.
3532.7 Permit bonds.
3532.8 Terms and conditions of permit.
3532.8-1 Duration of permit.
3532.8-2 Dating of permits.
3532.8-3 Annual rental.
3532.8-4 Special stipulations.
3532.9 Prospecting permit extensions.
3532.9-1 Conditions for, and duration of, extensions.
3532.9-2 Application for extension.
3532.9-3 Effective date.

Subpart 3533—Preference Right Lease

3533.1 Application for preference right lease.
3533.1-1 Filing requirements.
3533.1-2 Contents of application.
3533.2 Review of application.
3533.2-1 Preference right determination.
3533.2-2 Surface management agency.
3533.3 Issuance of lease.
3533.4 Rejection of application.

Subpart 3534—Exploration License

3534.0-3 Authority.
3534.1 Exploration license.
3534.2 Regulations applicable.
3534.3 Exploration plan.
3534.4 Notice of exploration.
3534.4-1 Contents of notice.
3534.4-2 Publication and posting of notice.
3534.4-3 Notice of participation.
3534.4-4 Decision on plan and participation.
3534.5 Submission of data.
3534.6 Modification of exploration plan.

Sec.

Subpart 3535—Competitive Leasing

3535.1 Lands subject only to competitive leasing.
3535.2 Surface management agency.
3535.3 Sale procedures.
3535.3-1 Publication and posting of notice.
3535.3-2 Contents of notice.
3535.3-3 Detailed statement.
3535.4 Bid opening.
3535.5 Award of lease.
3535.6 Rejection of bid.

Subpart 3536—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

3536.1 Lands subject to lease.
3536.2 Special requirements.
3536.3 Filing requirements.
3536.4 Surface management agency.
3536.5 Payment of bonus.
3536.6 Terms and conditions of lease.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C.1701 *et seq.*); the Act of Mar. 3, 1933, as amended; sec. 10, Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriations Act (31 U.S.C 9701).

SOURCE: 51 FR 15233, Apr. 22, 1986, unless otherwise noted.

Subpart 3530—Potassium Leasing: General

§ 3530.0-3 Authority.

Authority for leasing deposits of chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium, hereinafter referred to as deposits of potassium or any potassium compound, is shown under § 3500.0-3 (a) and (c) of this title.

§ 3530.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits of potassium or any potassium compound found on lands available for leasing. The regulations provide for this in the following manner:

(a) *Prospecting permits* allow the permittee to explore for deposits of potassium or any potassium compound.

(b) *Preference right leases* are issued to the holders of prospecting permits who demonstrate the discovery of a valuable deposit of potassium or any potassium compound under the permit and the lands covered by the permit are chiefly valuable for potassium or any potassium compound.

(c) *Exploration licenses* allow the licensee to explore known deposits of potassium or any potassium compound to obtain data but do not grant the licensee any preference or other right to a lease.

(d) *Competitive leases* are issued for known deposits of potassium or any potassium compound and allow the lessee to mine the deposit.

(e) *Fringe acreage leases* are issued noncompetitively for known deposits of potassium or any potassium compound adjacent to existing mines on non-federal lands which can only be mined as part of the existing mining operation.

(f) *Lease modifications* are used to add known deposits of potassium or any potassium compound to an adjacent Federal lease which contains an existing mine, provided the deposits can only be mined as part of the existing mining operation.

§ 3530.2 Other applicable regulations.

§ 3530.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of part 3500 only to the cross-referenced regulations.

§ 3530.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California and as applicable, supplements this part. Except where specific regulations in part 3580 of this title are applicable the regulations in this part and part 3500 of this title shall govern the leasing of deposits of potassium or any potassium compound in those national recreation areas and those patented lands.

§ 3530.3 Allowable acreage holdings.

No person, association or corporation shall hold at any particular time either directly or indirectly, more than 51,200 acres in permits and leases in any 1 State, except, the authorized officer may authorize additional acreage if he/she finds, upon a satisfactory showing by the applicant, that the additional acreage is needed for the economic and efficient extraction of potassium from concentrated brines in connection with the lessee's existing mining operations.

Subpart 3531—Lease Terms and Conditions

§ 3531.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under part 3530 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of potassium, potassium compounds and other related products, including, but not limited to, sodium and sodium compounds.

§ 3531.2 Rental and royalty.

§ 3531.2-1 Rental.

(a) Each lease shall provide for the payment of rental at the rate of cents per acre or fraction thereof for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth years and $1 for the sixth and each succeeding year during the continuance of the lease. Rental is payable annually on or before January 1. The rental paid for any year shall be credited against the first royalties that accrue under the lease during the year for which the rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3531.2-2 Production royalty.

All leases shall be conditioned upon the payment of such royalties as may be specified in the lease as fixed by the authorized officer in advance as provided under § 3503.2-1 of this title, but shall not be less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market.

§ 3531.3 Duration of lease.

The lease shall be issued for an indeterminate period subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3531.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files an objection to the readjusted terms or relinquishes the lease. The authorized officer shall issue a decision responding to the objections, and if the response is adverse to the lessee, the decision shall grant the right of appeal under part 4 of this title. The effective date of the readjustment shall not be affected by the filing of objections or by the filing of a notice of appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions shall be effective pending the outcome of the objections of the appeal provided for in paragraph (b) of this section unless the authorized officer provides otherwise. Upon the filing of an objection or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals shall be suspended pending the outcome of the objection or appeal. However, any such increased royalties, minimum royalties and rentals shall accrue during the pendency of the appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the objection or on appeal, the accrued balance, plus interest at the rate specified for late payment by the Service shall be payable (See part 3590). Pending the decision on the objection or the appeal, the royalties, minimum royalties and rentals shall be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

§ 3531.5 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See subpart 3504)

§ 3531.6 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction.

§ 3531.7 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by subpart 3509 of this title.

(e) Exploration and mining are covered by part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

Subpart 3532—Potassium Prospecting Permits

§ 3532.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain and acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of potassium or any potassium compound, except prospecting permits may not be issued for lands in or adjacent to Searles Lake, California. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of potassium or any potassium compound, and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3532.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of potassium or any potassium compound in accordance with the terms and conditions of the permit. The permittee may remove only such material as may be necessary to demonstrate the existence of a valuable mineral deposit.

§ 3532.3 Application for prospecting permit.

§ 3532.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision, but shall not be less than $20.

§ 3532.3-2 Contents of application.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3532.3-3 Exploration plans.

After initial review and clearance of the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3532.3-4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days from receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3532.4 Determination of priorities.

§ 3532.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3532.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with subpart 1821 of this title.

§ 3532.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3532.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3532.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See subpart 3504.)

§ 3532.8 Terms and conditions of permit.

§ 3532.8-1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may be extended for an additional 2 year period. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3532.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3532.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3532.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also part 3580)

§ 3532.9 Prospecting permit extensions.

§ 3532.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 2 years by the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3532.9-2 Application for extension.

(a) Filing requirements:

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Applications for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall, if applicable:

(1) Demonstrate that the permittee has met the conditions for extension set forth in § 3532.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3532.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3533—Preference Right Lease

§ 3533.1 Application for preference right lease.

§ 3533.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See subpart 3503)

§ 3533.1-2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-federal lands.

§ 3533.2 Review of application.

§ 3533.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of potassium or any potassium compound and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3533.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3533.1-2 of this title.

§ 3533.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of potassium or any potassium compound was discovered and that the lands are chiefly valuable therefor.

§ 3533.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of potassium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of potassium or any potassium compound was discovered and that the lands are chiefly valuable therefor.

Subpart 3534—Exploration License

§ 3534.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3534.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased deposits of potassium or any potassium compound to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3534.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under part 2920 of this title shall govern the issuance of exploration licenses.

§ 3534.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3532.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3534.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3534.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3534.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3534.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting of the Notice of Exploration.

§ 3534.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3534.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3534.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3535—Competitive Leasing

§ 3535.1 Lands subject only to competitive leasing.

(a) Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable deposit of potassium or any potassium compound may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in parts 3508 and 3536 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

(b) Leases may be offered for lands in or adjacent to Searles Lake, California, without regard to the quantity or quality of the potassium deposit that may be present therein.

§ 3535.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3535.3 Sale procedures.

§ 3535.3–1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale also shall be posted for 30 days in the public room of the proper BLM office.

§ 3535.3–2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the deposit of potassium or any potassium compound being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3535.3–3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3535.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3535.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3535.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3536—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

§ 3536.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of potassium or any potassium compound that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3536.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3536.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental ra forth in the base lease for a mo tion made payable to the Depar of the Interior—Bureau of Land agement.

(c) The application shall:

(1) Make reference to the number of the lease if the lands a an existing Federal lease;

(2) Contain a complete and acc description of the lands desired;

(3) Include a showing that a de of potassium or any potassium pound extends from the applic adjoining lease or from private l owned or controlled by the appli and

(4) Include proof of ownershi control of the mineral deposit in adjoining lands if not under a Fed lease.

§ 3536.4 Surface management agency.

The surface management agenc other than the Bureau, shall be sulted in accordance with § 3500.9 part 3580 of this title, as applicable

§ 3536.5 Payment of bonus.

Prior to the issuance of a new le or a modification of an existing le the applicant shall be required to a bonus in an amount determined the authorized officer based on an praisal. In no event shall such p ment be less than $1 per acre or fr tion thereof.

§ 3536.6 Terms and conditions of lease.

New leases shall be issued subject the terms and conditions set out und subpart 3531 of this title. The ter and conditions of a modified lea shall be the same as in the existi lease.

PART 3540—SULPHUR

Subpart 3540—Sulphur Leasing: General

Sec.
3540.0-3 Authority.
3540.1 Leasing procedures.
3540.2 Other applicable regulations.
3540.2-1 General leasing regulations.
3540.2-2 Special areas.
3540.3 Allowable acreage holdings.

Sec.

Subpart 3541—Lease Terms and Conditions

3541.1 Applicability of lease terms and conditions.
3541.2 Rental and royalty.
3541.2-1 Rental.
3541.2-2 Production royalty.
3541.3 Duration of lease.
3541.4 Bonds.
3541.5 Special stipulations.
3541.6 Other applicable regulations.

Subpart 3542—Sulphur Prospecting Permits

3542.1 Areas subject to prospecting.
3542.2 Rights conferred by issuance of prospecting permits.
3542.3 Application for prospecting permit.
3542.3-1 Filing requirements.
3542.3-2 Contents of application.
3542.3-3 Exploration plans.
3542.3-4 Rejection of application.
3542.4 Determination of priorities.
3542.4-1 Regular filings.
3542.4-2 Simultaneous filings.
3542.5 Amendment to application.
3542.6 Withdrawal of application.
3542.7 Permit bonds.
3542.8 Terms and conditions of permit.
3542.8-1 Duration of permit.
3542.8-2 Dating of permits.
3542.8-3 Annual rental.
3542.8-4 Special stipulations.

Subpart 3543—Preference Right Lease

3543.1 Application for preference right lease.
3543.1-1 Filing requirements.
3543.1-2 Contents of application.
3543.2 Review of application.
3543.2-1 Preference right determination.
3543.2-2 Surface management agency.
3543.3 Issuance of lease.
3543.4 Rejection of application.

Subpart 3544—Exploration License

3544.0-3 Authority.
3544.1 Exploration license.
3544.2 Regulations applicable.
3544.3 Exploration plan.
3544.4 Notice of exploration.
3544.4-1 Contents of notice.
3544.4-2 Publication and posting of notice.
3544.4-3 Notice of participation.
3544.4-4 Decision on plan and participation.
3544.5 Submission of data.
3544.6 Modification of exploration plan.

Subpart 3545—Competitive Leasing

3545.1 Lands subject only to competitive leasing.
3545.2 Surface management agency.

Sec.
3545.3 Sale procedures.
3545.3-1 Publication and posting of notice.
3545.3-2 Contents of notice.
3545.3-3 Detailed statement.
3545.4 Bid opening.
3545.5 Award of lease.
3545.6 Rejection of bid.

Subpart 3546—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

3546.1 Lands subject to lease.
3546.2 Special requirements.
3546.3 Filing requirements.
3546.4 Surface management agency.
3546.5 Payment of bonus.
3546.6 Terms and conditions of lease.

Subpart 3547—Lease Renewals

3547.1 Applications.
3547.2 Bonds.
3547.3 Failure to apply for renewal.
3547.4 Lease terms and conditions.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10, Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of October 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15238, Apr. 22, 1986, unless otherwise noted.

Subpart 3540—Sulphur Leasing: General

§ 3540.0-3 Authority.

Authority for leasing deposits of sulphur is shown under § 3500.0-3 (a) and (c) of this title.

§ 3540.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of sulphur found on public domain lands in New Mexico and Louisiana and on all acquired lands which are available for leasing. The regulations provide for this in the following manner:

(a) *Prospecting permits* allow the permittee to explore for deposits of sulphur.

(b) *Preference right leases* are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of sulphur under the permit and demonstrate that the lands covered by the permit are chiefly valuable for sulphur.

(c) *Exploration licenses* allow the licensee to explore known deposits of sulphur to obtain data but do not grant the licensee any preference or other right to a lease.

(d) *Competitive leases* are issued for known deposits of sulphur and allow the lessee to mine the deposit.

(e) *Fringe acreage leases* are issued noncompetitively for known deposits of sulphur adjacent to existing mines on non-federal lands which can only be mined as part of the existing mining operation.

(f) *Lease modifications* are used to add known deposits of sulphur to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3540.2 Other applicable regulations.

§ 3540.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of part 3500 of this title only to the cross-referenced regulations.

§ 3540.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in part 3580 of this title are applicable, the regulations in this part and part 3500 of this title shall govern the leasing of sulphur in those national recreation areas and those patented lands.

§ 3540.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, more than 1,920 acres in the aggregate in 3 prospecting permits and leases in any 1 State.

Subpart 3541—Lease Terms and Conditions

§ 3541.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under part 3540 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of sulphur.

§ 3541.2 Rental and royalty.

§ 3541.2-1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance during the continuance of the lease at the rate of 50 cents per acre or fraction thereof. The rental for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Rental remittances shall be made in accordance with § 3503.1 of this title.

§ 3541.2–2 Production royalty.

All leases shall be conditioned upon the payment to the United States of a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

§ 3541.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter. (See subpart 3547)

§ 3541.4 Bonds.

Prior to issuance of a lease, the applicant shall be required to furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See subpart 3504)

§ 3541.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also part 3580)

§ 3541.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by subpart 3509 of this title.

(e) Exploration and mining are covered by part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3542—Sulphur Prospecting Permits

§ 3542.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain lands in Louisiana and New Mexico and any acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of sulphur deposits. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of sulphur and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3542.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of sulphur in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3542.3 Application for prospecting permit.

§ 3542.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3542.3–2 Contents of application.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 640 acres in a reasonably compact form.

§ 3542.3-3 Exploration plans.

After initial review and clearance of the application, but prior to approval of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3542.3-4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3542.4 Determination of priorities.

§ 3542.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3542.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with subpart 1821 of this title.

§ 3542.5 Amendment to application.

An amendment to an application for a prospecting permit to include add-tional lands, not to exceed 640 acres in total, will receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3542.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3542.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See subpart 3504)

§ 3542.8 Terms and conditions of permit.

§ 3542.8–1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may not be extended.

§ 3542.8–2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3542.8–3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3542.8–4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See part 3580)

Subpart 3543—Preference Right Lease

§ 3543.1 Application for preference right lease.

§ 3543.1–1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See subpart 3503)

§ 3543.1–2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 640 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facili-

ties incidental thereto, on adjacent Federal or non-federal lands.

§ 3543.2 Review of application.

§ 3543.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of sulphur and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3543.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3543.1-2 of this title.

§ 3543.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of sulphur was discovered and that the lands are chiefly valuable therefor.

§ 3543.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of sulphur and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of sulphur was discovered and that the lands are chiefly valuable therefor.

Subpart 3544—Exploration License

§ 3544.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3544.1 Exploration license.

Private parties, jointly and severally, may apply for exploration licenses to explore known, unleased sulphur deposits to obtain geologic, environmental, and other pertinent data concerning such deposits.

§ 3544.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under part 2920 of this title shall govern the issuance of exploration licenses.

§ 3544.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3542.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3544.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3544.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3544.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3544.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3544.4-4 Decision on plan and participation.

The authorized officer may issue the license naming the participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3544.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3544.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3545—Competitive Leasing

§ 3545.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable sulphur deposit may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in subparts 3508 and 3546 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3545.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3545.3 Sale procedures.

§ 3545.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3545.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the sulphur deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3545.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice:

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3545.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3545.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3545.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3546—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

§ 3546.1 Lands subject to lease.

Lands available for leasing which are known to contain a sulphur deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3546.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 640 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 640 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area,

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3546.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 50 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a sulphur deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3546.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3546.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3546.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under subpart 3541 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

Subpart 3547—Lease Renewals

§ 3547.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of 50 cents per acre or fraction thereof.

§ 3547.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by subpart 3504 of this title.

§ 3547.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3547.1 of this title, the lease shall expire on the last day of the current lease term.

§ 3547.4 Lease terms and conditions.

Each renewal lease shall be issued on a form approved by the Director and shall be dated effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under subpart 3541 of this title.

PART 3550—"GILSONITE" (INCLUDING ALL VEIN-TYPE SOLID HYDROCARBONS)

Subpart 3350—"Gilsonite" Leasing: General

Sec.

3550.0-3 Authority.
3550.1 Leasing procedures.
3550.2 Other applicable regulations.
3550.2-1 General leasing regulations.
3550.2-2 Special areas.
3550.3 Allowable acreage holdings.

Subpart 3551—Lease Terms and Conditions

3551.1 Applicability of lease terms and conditions.
3551.2 Rental and royalty.
3551.2-1 Rental.
3551.2-2 Production royalty.

Sec.
3551.3 Duration of lease.
3551.4 Readjustment.
3551.5 Bonds.
3551.6 Special stipulations.
3551.7 Other applicable regulations.

Subpart 3552—"Gilsonite" Prospecting Permits

3552.1 Areas subject to prospecting.
3552.2 Rights conferred by issuance of prospecting permits.
3552.3 Application for prospecting permit.
3552.3-1 Filing requirements.
3552.3-2 Contents of application.
3552.3-3 Exploration plans.
3552.3-4 Rejection of application.
3552.4 Determination of priorities.
3552.4-1 Regular filings.
3552.4-2 Simultaneous filings.
3552.5 Amendment to application.
3552.6 Withdrawal of application.
3552.7 Permit bonds.
3552.8 Terms and conditions of permit.
3552.8-1 Duration of permit.
3552.8-2 Dating of permits.
3552.8-3 Annual rental.
3552.8-4 Special stipulations.
3552.9 Prospecting permit extensions.
3552.9-1 Conditions for, and duration of, extensions.
3552.9-2 Application for extension.
3552.9-3 Effective date.

Subpart 3553—Preference Right Lease

3553.1 Application for preference right lease.
3553.1-1 Filing requirements.
3553.1-2 Contents of application.
3553.2 Review of application.
3553.2-1 Preference right determination.
3553.2-2 Surface management agency.
3553.3 Issuance of lease.
3553.4 Rejection of application.

Subpart 3554—Exploration License

3554.0-3 Authority.
3554.1 Exploration license.
3554.2 Regulations applicable.
3554.3 Exploration plan.
3554.4 Notice of exploration.
3554.4-1 Contents of notice.
3554.4-2 Publication and posting of notice.
3554.4-3 Notice of participation.
3554.4-4 Decision on plan and participation.
3554.5 Submission of data.
3554.6 Modification of exploration plan.

Subpart 3555—Competitive Leasing

3555.1 Lands subject only to competitive leasing.
3555.2 Surface management agency.
3555.3 Sale procedures.

Sec.
3555.3-1 Publication and posting of notic
3555.3-2 Contents of notice.
3555.3-3 Detailed statement.
3555.4 Bid opening.
3555.5 Award of lease.
3555.6 Rejection of bid.

Subpart 3556—Noncompetitive Leasing: Fring Acreage Leases and Lease Modification

3556.1 Lands subject to lease.
3556.2 Special requirements.
3556.3 Filing requirements.
3556.4 Surface management agency.
3556.5 Payment of bonus.
3556.6 Terms and conditions of lease.

AUTHORITY: The Mineral Leasing Act o 1920, as amended and supplemented (3 U.S.C. 181 *et seq.*), the Mineral Leasing Ac for Acquired Lands of 1947, as amended (3 U.S.C. 351-359); the Federal Land Polic and Management Act of 1976 (43 U.S.C 1701 *et seq.*); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15243, Apr. 22, 1986, unles otherwise noted.

Subpart 3550—"Gilsonite" Leasing: General

§ 3550.0-3 Authority.

(a) Authority for leasing "Gilsonite" (including all vein-type solid hydrocarbons) is shown under § 3500.0-3(a) of this title.

(b) In 1981, Congress amended the Act by including tar sand within the meaning of oil and retaining separate leasing authority for vein-type solid hydrocarbons such as "Gilsonite". Fluid and gaseous hydrocarbons are leased as oil and gas, while bedded deposits are leased either as coal, oil shale or as oil (tar sand). The leasing authority for vein-type solid hydrocarbons, hereinafter referred to as "Gilsonite", is implemented by the regulations in this part.

§ 3550.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of "Gilsonite", found on lands available for leasing. The regulations provide for this in the following manner:

(a) *Prospecting permits* allow the permittee to explore for deposits of "Gilsonite".

(b) *Preference right leases* are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of "Gilsonite" under the permit.

(c) *Exploration licenses* allow the licensee to explore known deposits of "Gilsonite" to obtain data but do not grant the licensee any preference or other right to a lease.

(d) *Competitive leases* are issued for known deposits of "Gilsonite" and allow the lessee to mine the deposit.

(e) *Fringe acreage leases* are issued noncompetitively for known deposits of "Gilsonite" adjacent to existing mines on non-federal lands which can only be mined as part of the existing mining operation.

(f) *Lease modifications* are used to add known deposits of "Gilsonite" to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3550.2 Other applicable regulations.

§ 3550.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of part 3500 of this title only to the cross-referenced regulations.

§ 3550.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and, as applicable, supplements this part. Except where specific regulations in part 3580 of this title are applicable, the regulations in this part and part 3500 of this title shall govern the leasing of "Gilsonite" in those national recreation areas and those patented lands.

§ 3550.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 7,680 acres under prospecting permit and lease in any one state.

Subpart 3551—Lease Terms and Conditions

§ 3551.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under part 3550 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of "Gilsonite".

§ 3551.2 Rental and royalty.

§ 3551.2-1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance at the rate of 50 cents per acre or fraction thereof. The annual rental payment shall not be less than $20. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease (See § 3509.4-2).

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3551.2-2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2-1 of this title.

§ 3551.3 Duration of lease.

The lease shall be issued for 20 years and for so long thereafter as "Gilsonite" is produced in paying quantities subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3551.4 Readjustment.

(a) The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such period. Prior to the expiration of each 20-year period, the authorized officer shall transmit proposed readjusted terms and conditions to the lessee. If the authorized officer fails to transmit the proposed readjusted terms and conditions prior to the expiration of the 20-year period, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.

(b) The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files an objection to the readjusted terms or relinquishes the lease. The authorized officer shall issue a decision responding to the objections, and if the response is adverse to the lessee, the decision shall grant the right of appeal under part 4 of this title. The effective date of the readjustment shall not be affected by the filing of objections or by the filing of a notice of appeal.

(c) Except as provided in this paragraph, the readjusted lease terms and conditions shall be effective pending a response to the objections or the outcome of the appeal provided for in paragraph (b) of this section unless the authorized officer provides otherwise. Upon the filing of an objection or appeal, the obligation to pay any increased readjusted royalties, minimum royalties and rentals shall be suspended pending the outcome of the objection or appeal. However, any such increased royalties, minimum royalties and rentals shall accrue during the pendency of the objection or appeal, commencing with the effective date of the readjustment. If the increased royalties, minimum royalties and rentals are sustained by the decision on the objection or on appeal, the accrued balance, plus interest at the rate specified for late payment by the Service shall be payable (See part 3590). Pending the decision on the objection or the appeal, the royalties, minimum royalties and rentals shall be payable as specified by the lease terms and conditions in effect prior to the end of the 20-year period.

§ 3551.5 Bonds.

Prior to issuance of a lease, the applicant shall furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000 (See subpart 3504).

§ 3551.6 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title (See also part 3580).

§ 3551.7 Other applicable regulations.

Leases issued under this part shall also be subject to conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title;

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title;

(c) Assignments and subleases are covered by subpart 3506 of this title;

(d) Cancellation and relinquishment are covered by subpart 3509 of this title;

(e) Exploration and mining are covered by part 3590 of this title; and

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A

Subpart 3552—"Gilsonite" Prospecting Permits

§ 3552.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain or acquired lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of "Gilsonite". Discovery of a valuable deposit of "Gilsonite" within the terms of the permit entitles the permittee to a preference right lease.

§ 3552.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of "Gilsonite" in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3552.3 Application for prospecting permit.

§ 3552.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3552.3-2 Contents of application.

Each application shall be type-written, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings (See subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 5120 acres in a reasonably compact form.

§ 3552.3-3 Exploration plans.

After initial review and clearance of the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applicant to file in triplicate, an exploration plan reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3552.3–4 Rejection of application.

Any application for a prospecting permit which does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3552.4 Determination of priorities.

§ 3552.4–1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3552.4–2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with subpart 1821 of this title.

§ 3552.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3552.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3552.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000 (See subpart 3504).

§ 3552.8 Terms and conditions of permit.

§ 3552.8–1 Duration of permit.

Prospecting permits are issued for an initial term of 2 years, and may be extended for a period not to exceed 2 years as provided in § 3552.9 of this title. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3552.8–2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3552.8–3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3552.8–4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title (See also part 3580).

§ 3552.9 Prospecting permit extensions.

§ 3552.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 2 years at the discretion of the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3552.9-2 Application for extension.

(a) Filing requirements:

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Application for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set out in § 3552.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3552.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3553—Preference Right Lease

§ 3553.1 Application for preference right lease.

§ 3553.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20 (see subpart 3503).

§ 3553.1-2 Contents of application.

(a) The application shall contain a statement of qualifications and holdings in compliance with subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 5,120 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems, the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings, and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or

planned mining operations, or facilities incidental thereto, on adjacent Federal or non-federal lands.

§ 3553.2 Review of application.

§ 3553.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of "Gilsonite". The determination shall be based on the data furnished to the authorized officer by the permittee as required by part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3553.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3553.1-2 of this title.

§ 3553.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of "Gilsonite" was discovered.

§ 3553.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of "Gilsonite";

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts sufficient to show entitlement to a lease, a permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of "Gilsonite" was discovered.

Subpart 3554—Exploration License

§ 3554.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3554.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased "Gilsonite" deposits to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3554.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under part 2920 of this title shall govern the issuance of exploration licenses.

§ 3554.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3552.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3554.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3554.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3554.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3554.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3554.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3554.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas involved have been leased or until the authorized officer determines that the data are not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

§ 3554.6 Modification of exploration plan.

Upon application by the participants, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3555—Competitive Leasing

§ 3555.1 Lands subject only to competitive leasing.

Lands available for leasing that have surface and/or subsurface evidence to reasonably assure the existence of a valuable deposit of "Gilsonite" may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in subparts 3508 and 3556 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3555.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3555.3 Sale procedures.

§ 3555.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3555.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the "Gilsonite" deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3555.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions including the rental, royalty rates, bond amount, and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See part 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay its proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3555.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3555.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the proposed lease attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3555.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3556—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

§ 3556.1 Lands subject to lease.

Lands available for leasing which are known to contain a "Gilsonite" deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by an issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3556.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 5120 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 5120 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) Leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3556.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adj an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a "Gilsonite" deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3556.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable.

§ 3556.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event, shall such payment be less than $1 per acre or fraction thereof.

§ 3556.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under subpart 3551 of this title. The terms and conditions of modified leases shall be the same as in the existing leases.

PART 3560—HARDROCK MINERALS

Subpart 3560—Hardrock Minerals Leasing: General

Sec.
3560.0-3 Authority.
3560.1 Leasing procedures.
3560.2 Other applicable regulations.
3560.2-1 General leasing regulations.
3560.2-2 Special areas.
3560.3 Lands subject to lease.
3560.3-1 Department of Agriculture lands.
3560.3-2 National Park Service recreation areas.
3560.3-3 White Mountains National Recreation Area, Alaska.
3560.3-4 Lands patented to the State of California for park purposes.
3560.4 Allowable acreage holdings.
3560.5 Identity of mineral or minerals required.
3560.6 Multiple development.
3560.7 Hardrock mineral specimen collection.

Subpart 3561—Lease Terms and Conditions

3561.1 Applicability of lease terms and conditions.
3561.2 Rental and royalty.
3561.2-1 Rental.
3561.2-2 Production royalty.
3561.3 Duration of lease.
3561.4 Bonds.
3561.5 Special stipulations.
3561.6 Other applicable regulations.

Subpart 3562—Hardrock Minerals Prospecting Permits

3562.1 Areas subject to prospecting.
3562.2 Rights conferred by issuance of prospecting permits.
3562.3 Application for prospecting permit.
3562.3-1 Filing requirements.
3562.3-2 Contents of application.
3562.3-3 Exploration plans.
3562.3-4 Rejection of application.
3562.4 Determination of priorities.
3562.4-1 Regular filings.
3562.4-2 Simultaneous filings.
3562.5 Amendment to application.
3562.6 Withdrawal of application.
3562.7 Permit bonds.
3562.8 Terms and conditions of permit.
3562.8-1 Duration of permit.
3562.8-2 Dating of permits.
3562.8-3 Annual rental.
3562.8-4 Special stipulations.
3562.9 Prospecting permit extensions.
3562.9-1 Conditions for, and duration of, extensions.
3562.9-2 Application for extension.
3562.9-3 Effective date.

Subpart 3563—Preference Right Lease

3563.1 Application for preference right lease.
3563.1-1 Filing requirements.
3563.1-2 Contents of application.
3563.2 Review of application.

Sec.
3563.2-1 Preference right determination.
3563.2-2 Surface management agency.
3563.3 Issuance of lease.
3563.4 Rejection of application.

Subpart 3564—Competitive Leasing

3564.1 Lands subject only to competitive leasing.
3564.2 Surface management agency.
3564.3 Sale procedures.
3564.3-1 Publication and posting of notice.
3564.3-2 Contents of notice.
3564.3-3 Detailed statement.
3564.4 Bid opening.
3564.5 Award of lease.
3564.6 Rejection of bid.

Subpart 3565—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

3565.1 Lands subject to lease.
3565.2 Special requirements.
3565.3 Filing requirements.
3565.4 Surface management agency.
3565.5 Payment of bonus.
3565.6 Terms and conditions of lease.

Subpart 3566—Lease Renewals

3566.1 Applications.
3566.2 Bonds.
3566.3 Failure to apply for renewal.
3566.4 Lease terms and conditions.

Subpart 3567—Development Contracts

3567.1 Development contracts and processing and milling arrangements.
3567.2 Acreage chargeability.
3567.3 Applications.
3567.4 Approval.

AUTHORITY: The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3, Act of Sept. 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10, Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2—460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15248, Apr. 22, 1986, unless otherwise noted.

Subpart 3560—Hardrock Minerals Leasing: General

§ 3560.0-3 Authority.

Authority for leasing hardrock minerals is shown under § 3500.0-3 (b) and (c) of this title.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3560.1 Leasing procedures.

The regulations in this part provide the procedures for qualified applicants to obtain rights to develop deposits of hardrock minerals found on certain lands available for leasing. The regulations provide for this in the following manner:

(a) *Prospecting permits* allow the permittee to explore for deposits of hardrock minerals.

(b) *Preference right leases* are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of a hardrock mineral(s) under the permit.

(c) *Competitive leases* are issued for known deposits of hardrock minerals and allow the lessee to mine the deposit.

(d) *Fringe acreage leases* are issued noncompetitively for known deposits of hardrock minerals adjacent to existing mines on non-federal lands which can only be mined as part of the existing mining operation.

(e) *Lease modifications* are used to add known deposits of hardrock minerals to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3560.2 Other applicable regulations.

§ 3560.2-1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation and lands not available for leasing. Cross-reference to specific regulations in part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of part 3500 only to the cross-referenced regulations.

§ 3560.2-2 Special areas.

Part 3580 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in part 3580 of this title are applicable, the regulations in this part and part 3500 shall govern the leasing of hardrock minerals in those national recreation areas and those patented lands.

§ 3560.3 Lands subject to lease.

§ 3560.3-1 Department of Agriculture lands.

With the consent of the Secretary of Agriculture and subject to such conditions as he/she may prescribe, the hardrock minerals in the following lands administered by the Secretary of Agriculture are subject to lease:

(a) Lands acquired pursuant to the laws set out in Reorganization Plan No. 3 of 1946: (1) "The Act of March 4, 1917 (39 Stat. 1134; 16 U.S.C. 520); (2) Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U.S.C. 401, 403a and 408); (3) The 1935 Emergency Relief Appropriations Act of April 8, 1935 (48 Stat. 115, 118); (4) Section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); and (5) The Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended by the Act of July 28, 1942 (56 Stat. 725; 7 U.S.C. 1011(c) and 1018)."

(b) Lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83).

(c) Portions of Juan Jose Lobato Grant (North Lobato) and of the Anton Chica Grant (El Pueblo) in New Mexico (66 Stat. 285) described in section 1 of the Act of June 28, 1952.

(d) Public domain lands within National Forest lands in Minnesota.

(e) Lands in Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area, subject to the regulations in subpart 3583 of this title.

§ 3560.3-2 National Park Service recreation areas.

With the consent of the Regional Director, National Park Service, and subject to such conditions as may be prescribed by the Regional Director, the following national recreation areas administered by the National Park Service are available for leasing subject to the regulations in subpart 3582 of this title:

(a) Lake Mead National Recreation Area;

(b) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area;

(c) Ross Lake and Lake Chelan National Recreation Areas, and

(d) Glen Canyon National Recreation Area.

§ 3560.3-3 White Mountains National Recreation Area, Alaska.

The lands within White Mountains National Recreation Area are available for lease subject to the regulations in subpart 3585 of this title.

§ 3560.3-4 Lands patented to the State of California for park purposes.

The reserved hardrock minerals in certain lands patented to the State of California are available for lease subject to the regulations in subpart 3574 of this title.

§ 3560.4 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 20,480 acres in any 1 state under prospecting permit and lease for a particular hardrock mineral or an associated group of hardrock minerals, of which not more than 10,240 acres may be held under lease. However, the authorized officer may authorize a lessee to hold an additional 10,240 acres under lease if he/she finds, upon a satisfactory showing submitted by the lessee, that such additional acreage is necessary to promote the orderly development of the mineral resource, and does not result in undue control of the mineral to be mined, removed and marketed. In any case, the aggregate chargeable acreage held under permit and lease shall not exceed 20,480 acres in any 1 state.

§ 3560.5 Identity of mineral or minerals required.

All applications under this section shall specify the mineral or minerals for which the lease or permit is sought. A permit, if granted, shall be for the mineral or minerals requested and any associated minerals. A preference right lease shall be issued for the mineral(s) specified in the permit for which a valuable deposit has been discovered and for any associated minerals. (See also subparts 3563 and 3565)

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3560.6 Multiple development.

The granting of a hardrock permit or lease for the prospecting, development, or production of deposits for a specific mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation. It is recognized, however, that multiple permits or leases for solid hardrock minerals on the same lands would not be compatible in most cases. For this reason, multiple permits or leases for such minerals generally shall not be issued for the same lands.

§ 3560.7 Hardrock mineral specimen collection.

The surface management agency having jurisdiction over the lands shall determine which areas and under what conditions mineral specimens may be collected for non-commercial purposes (e.g., recreation, hobby collecting, scientific or research specimens, etc), and whether an approved permit shall be required prior to entry on the lands by the collector. If such a permit is necessary, it shall be obtained from the responsible official of the surface management agency who shall have the discretionary authority to issue the permit, determine the permit fee, if any, and specify the terms and conditions of the permit.

Subpart 3561—Lease Terms and Conditions

§ 3561.1 Applicability of lease terms conditions.

The lease terms and conditions out under this section apply to leases issued or renewed under pa 3560 of this title. Each lease shall issued on a form approved by the D rector and shall be dated as of t first day of the month after its a proval by the authorized officer unle the applicant requests in writing th it be dated the first day of the mont in which it is approved. Each leas shall authorize, in accordance with i terms and conditions, the mining o the hardrock mineral(s) for which th lease issued, including any associate minerals.

§ 3561.2 Rental and royalty.

§ 3561.2-1 Rental.

(a) Each lease shall provide for the payment of rental at the rate of $1 per acre or fraction thereof each year on or before the anniversary date of the lease. The rental payment shall not be less than $20. The rental paid for any year shall be credited against any royalties which may accrue under the lease during the year for which the rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3561.2-2 Production royalty.

The production royalty shall be determined by the authorized officer on a case-by-case basis as provided in § 3503.2-1 of this title. If hardrock minerals other than those specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate shall be established by the authorized officer for such mineral(s).

§ 3561.3 Duration of lease.

The lease shall be issued for a period not exceeding 20 years as determined by the authorized officer with a preference right in the lessee to renew for a term not to exceed 10 years at the end of the initial term and at the end of each 10-year period thereafter.

Editorial Note: See 52 FR 48124, Dec. 18, 1987, for a document correcting a latent ambiguity to the leasing regulations on hardrock minerals.

§ 3561.4 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See subpart 3504)

§ 3561.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also part 3580).

§ 3561.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by subpart 3509 of this title.

(e) Exploration and mining are covered by part 3590 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3562—Hardrock Minerals Prospecting Permits

§ 3562.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of available public domain and acquired lands subject to hardrock mineral leasing where prospecting or exploratory work is necessary to determine the existence or workability of a particular hardrock mineral(s). Discovery of a valuable deposit of any such mineral(s) within the term of the permit entitles the permittee to a preference right lease.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3562.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of the mineral(s) for which the permit was issued, such right to be in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3562.3 Application for prospecting permit.

§ 3562.3-1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of that form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3562.3-2 Contents of application.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's holdings in accordance with subpart 3502 of this title;

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form; and

(d) The name of mineral(s) for which the permit is sought. (See § 3560.5)

§ 3562.3-3 Exploration plans.

After initial review and clearance of the application, but prior to issuance of the prospecting permit, the authorized officer shall require the applicant to file an exploration plan in triplicate, reasonably designed to determine the existence or workability of the deposit. The exploration plan shall, insofar as possible, include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs and other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed locations of drill holes, trenches and roads; and

(f) Such other data as may be reasonably required by the authorized officer.

§ 3562.3-4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3562.4 Determination of priorities.

§ 3562.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3562.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands and for the same mineral, priority shall be determined in accordance with subpart 1821 of this title.

§ 3562.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3562.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3562.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See subpart 3504)

§ 3562.8 Terms and conditions of permit.

§ 3562.8-1 Duration of permit.

Prospecting permits are issued for an initial term of 2 years, and may be extended for a period not to exceed 4 years as provided in § 3562.9 of this title. No exploration activities other than those approved as part of an existing exploration plan shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3562.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3562.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3562.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9. (See also part 3580)

§ 3562.9 Prospecting permit extensions.

§ 3562.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 4 years by the authorized officer provided that:

(a) The permittee has been unable with reasonable diligence to determine the existence or workability of valuable deposits of any mineral(s) covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that in the opinion of the authorized officer the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3562.9-2 Application for extension.

(a)(1) An application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit. No specific application form is required.

(2) Applications for extension shall be accompanied by a nonrefundable filing fee of $25 and the advance rental of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set forth in § 3562.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3562.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3563—Preference Right Lease

§ 3563.1 Application for preference right lease.

§ 3563.1-1 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires. No specific form is required.

(b) The application shall be accompanied by the first year's rental at the rate of $1 per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20. (See subpart 3503)

§ 3563.1-2 Contents of application.

(a) The application shall include a statement of the applicant's holdings in accordance with subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall identify the mineral(s) of which a valuable deposit(s) was discovered.

(d) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(e) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-federal lands.

§ 3563.2 Review of application.

§ 3563.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of any mineral covered by the prospecting permit. The determination shall be based on data furnished the authorized officer by the permittee as required by part 3590 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3563.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and part 3580 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3563.1-2 of this title. On acquired lands administered by the Secretary of Agriculture, supplemental data in addition to that submitted under § 3563.1-2 of this title may be required. Such data will be used in the development of environmental analyses and special stipulations.

§ 3563.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the terms of the permit, a valuable deposit of any mineral(s) covered by the prospecting permit was discovered.

§ 3563.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of any mineral covered by the prospecting permit;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of the mineral(s) was discovered.

Subpart 3564—Competitive Leasing

§ 3564.1 Lands subject only to competitive leasing.

Lands where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable deposit of a particular hardrock mineral may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3564.2 Surface management agency.

Prior to competitive lease offering, the surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable. (See also § 3560.3)

§ 3564.3 Sale procedures.

§ 3564.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3564.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the mineral deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3564.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's statement of holdings (See subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay his/her proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3564.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3564.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3564.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3565—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

§ 3565.1 Lands subject to lease.

Lands available for leasing which are known to contain a hardrock mineral deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3565.2 Special requirements.

Before a fringe acreage lease may issued or a lease modified under t subpart, the authorized officer sh determine the following:

(a) The lands are contiguous to existing Federal lease or to non-fede al lands owned or controlled by the a plicant;

(b)(1) The new lease for fringe acr age is not in excess of 2,560 acres; or

(2) The acreage of the modifie lease, including additional lands, is n in excess of 2,560 acres;

(c) The mineral deposit is not in a area of competitive interest to holder of other active mining units in th area;

(d) The lands applied for lack suff cient reserves of the mineral resourc to warrant independent developmen and

(e) That leasing the lands will resul in conservation of natural resource and will provide for economical and ef ficient recovery as part of a minin unit.

§ 3565.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25 and an advance rental payment of $1 per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the land desired;

(3) Include a showing that a hardrock mineral deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3565.4 Surface management agency.

The surface management agency shall be consulted in accordance with § 3500.9 and part 3580 of this title, as applicable. (See also § 3560.3)

§ 3565.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3565.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under subpart 3561 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

Subpart 3566—Lease Renewals

§ 3566.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction thereof. The rental payment shall not be less than $20.

§ 3566.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by subpart 3504 of this title.

§ 3566.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3566.1 of this title, the lease shall expire on the last day of the lease term.

§ 3566.4 Lease terms and conditions.

Each lease, if renewed, shall be issued on a form approved by the Director and shall be dated effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under subpart 3561 of this title.

Subpart 3567—Development Contracts

§ 3567.1 Development contracts and processing and milling arrangements.

Development contracts and processing and milling arrangements by 1 or more lessees with 1 or more persons, associations or corporations to justify operations on a large scale for the discovery, development, production or transportation of ores may be approved by the authorized officer without regard to the acreage limitation set forth in §3560.4 of this title.

§ 3567.2 Acreage chargeability.

Leases and permits committed to an approved development contract or to a processing or milling arrangement shall not be included in computing accountable acreage.

§ 3567.3 Applications.

All applications shall be filed in triplicate in the proper BLM office. No specific form is required. An application shall include the following:

(a) Copies of the contract affecting the Federal leases and/or permits;

(b) A statement showing the nature and reasons for the requested contract;

(c) A statement showing all of the interests held in the contract area by the designated contractor; and

(d) The proposed or agreed upon plan of operation or development of the leased lands.

§ 3567.4 Approval.

Development contracts may be approved by the authorized officer when, in his/her judgment, conservation of natural resources or the public interest shall be best served thereby. The contract shall be signed and agreed upon by the parties prior to final approval by the Bureau.

PART 3570—ASPHALT IN OKLAHOMA

Subpart 3570—Asphalt in Oklahoma: General

Sec.
3570.0-3 Authority.
3570.1 Leasing procedures.
3570.2 Minerals and lands subject to leasing.
3570.3 Other applicable regulations.
3570.4 Allowable acreage holdings.

Subpart 3571—Lease Terms and Conditions

3571.1 Applicability of lease terms and conditions.
3571.2 Rental and royalty.
3572.2-1 Rental.
3571.2-2 Production royalty.
3571.3 Duration of lease.
3571.4 Bonds.
3571.5 Special stipulations.
3571.6 Other applicable regulations.

Subpart 3574—Competitive Leasing

3574.1 Lease by competitive bidding.
3574.2 Surface management agency.
3574.3 Sale procedures. .
3574.3-1 Publication and posting of notice.
3574.3-2 Contents of notice.
3574.3-3 Detailed statement.
3574.4 Bid opening.
3574.5 Award of lease.
3574.6 Rejection of bid.

Subpart 3575—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

3575.1 Lands subject to lease.
3575.2 Special requirements.
3575.3 Filing requirements.
3575.4 Surface management agency.
3575.5 Payment of bonus.
3575.6 Terms and conditions of lease.

Subpart 3576—Lease Renewals

3576.1 Applications.
3576.2 Bonds.
3576.3 Failure to apply for renewal.
3576.4 Lease terms and conditions.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15254, Apr. 22, 1986, unless otherwise noted.

Subpart 3570—Asphalt in Oklahom General

§ 3570.0-3 Authority.

Authorities for leasing asphalt Oklahoma are cited under § 3500. 3(a) of this title.

§ 3570.1 Leasing procedures.

The regulations in this part provid the procedures for qualified applicant to obtain rights to develop deposits o asphalt on certain lands in Oklahom The regulations provide for this in th following manner:

(a) *Competitive leases* are issued fo deposits of asphalt in Oklahoma without regard to the quantity or qualit of the mineral deposit and allow th lessee to mine the deposit.

(b) *Fringe acreage leases* are issue noncompetitively for known deposit of asphalt in Oklahoma adjacent t existing mines on non-federal land which can be mined only as part of the existing mining operation.

(c) *Lease modifications* are used t add known deposits of asphalt in Oklahoma to an adjacent Federal lease which contains an existing mine, provided the deposits can only be mined as part of the existing mining operation.

§ 3570.2 Minerals and lands subject to leasing.

By the Act of June 28, 1944 (58 Stat. 463, 483–485), Congress authorized the Secretary to acquire certain lands and mineral deposits in Oklahoma and amended the Act to authorize leasing of the asphalt on those lands. The lands and mineral deposits covered by the 1944 law are those reserved from allotment in accordance with the provisions of section 58 of the Supplemental Agreement of 1902 (32 Stat. 654) with the Choctaw-Chickasaw Nation of Indians. Congress ratified the purchase contract in the Act of June 24, 1948 (62 Stat. 596), and appropriated funds for the purchase in the Act of May 24, 1949 (63 Stat. 76).

§ 3570.3 Other applicable regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 of this title is provided in this part as an aid to the reader and is not intended to limit the applicability of part 3500 of this title only to the cross-referenced regulations.

§ 3570.4 Allowable acreage holdings.

No person, company, association or corporation may hold, at any one time, either directly or indirectly, leases exceeding in the aggregate 2,560 acres.

Subpart 3571—Lease Terms and Conditions

§ 3571.1 Applicability of lease terms and conditions.

Except as otherwise specifically stated, all lease terms and conditions set out under this section apply to all leases issued under part 3570 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of asphalt.

§ 3571.2 Rental and royalty.

§ 3571.2-1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of 25 cents per acre or fraction thereof for the first calendar year, 50 cents for the second, third, fourth and fifth calendar years, and $1 for each calendar year thereafter. Rental is payable annually on or before January 1. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4-2).

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3571.2-2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2-1 of this title, but shall not be less than 25 cents per ton of 2,000 pounds of marketable production.

§ 3571.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter.

§ 3571.4 Bonds.

Prior to issuance of a lease, the applicant shall furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000 (See subpart 3504).

§ 3571.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title (See also part 3580).

§ 3571.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2-2 of this title;

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title;

(c) Assignments and subleases are covered by subpart 3506 of this title;

(d) Cancellation and relinquishment are covered by subpart 3509 of this title;

(e) Exploration and mining are covered by part 3590 of this title; and

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3574—Competitive Leasing

§ 3574.1 Lease by competitive bidding.

Leases may be offered competitively under this part without regard to the quantity or quality of the mineral deposit in the lands subject to the lease. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3574.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 of this title, as applicable.

§ 3574.3 Sale procedures.

§ 3574.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3574.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3574.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The proposed lease on a form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount, and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See part 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay its proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and,

(g) Any other information deemed appropriate.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3574.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3574.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the proposed lease attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3574.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3575—Noncompetitive Leasing: Fringe Acreage Leases and Lease Modifications

§ 3575.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of asphalt that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3575.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 640 acres; or

(2) The acreage of the modified lease, including additional lands, is not in excess of 640 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) Leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3575.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that an asphalt deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3575.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 of this title, as applicable.

§ 3575.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event, shall such payment be less than $1 per acre or fraction thereof.

§ 3575.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under subpart 3571 of this title. The terms and conditions of modified leases shall be the same as in the existing leases.

Subpart 3576—Lease Renewals

§ 3576.1 Applications.

An application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. There is no specific form required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable filing fee of $25 and an advance rental payment of $1 per acre or fraction thereof.

§ 3576.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by subpart 3504 of this title.

§ 3576.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal timely, the lease shall expire on the last day of the lease term.

§ 3576.4 Lease terms and conditions.

Each renewal lease shall be issued on a form approved by the Director and shall be effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under subpart 3571 of this title.

PART 3580—SPECIAL LEASING AREAS

Subpart 3581—Gold, Silver or Quicksilver in Confirmed Private Land Grants

Sec.
3581.0-3 Authority.
3581.1 Lands to which applicable.
3581.2 Who may obtain a lease.
3581.3 Application for lease.
3581.4 Leases.
3581.4-1 Lease terms.
3581.4-2 Rate of royalty; investment determined.
3581.4-3 Lease form and execution.
3581.5 Bond.

Subpart 3582—National Park Service Areas

3582.0-3 Authority.
Sec.
3582.1 Other applicable regulations.
3582.1-1 Leasable minerals.
3582.1-2 Hardrock minerals.
3582.2 Lands to which applicable.
3582.2-1 Boundary maps.
3582.2-2 Excepted areas.
3582.3 Consent and consultation.

Subpart 3583—Shasta and Trinity Units Whiskeytown-Shasta-Trinity Nat Recreation Area

3583.0-3 Authority.
3583.1 Other applicable regulations.
3583.1-1 Leasable minerals.
3583.1-2 Hardrock minerals.
3583.2 Consent of Secretary of Agricul
3583.3 Application for hardrock mi leases.
3583.4 Hardrock mineral leases.
3583.4-1 Leasing units.
3583.4-2 Royalties, rentals and minin royalties.
3583.4-3 Special terms and conditions.
3583.4-4 Duration of lease.
3583.4-5 Lease by competitive bidding.
3583.5 Disposal of materials.

Subpart 3584—Reserved Minerals in L Patented to the State of Californi Park or Other Public Purposes

3584.0-3 Authority.
3584.1 Lands to which applicable.
3584.2 Minerals to be leased.
3584.3 Other applicable regulations.
3584.4 Notice of application.
3584.5 Protection of surface.
3584.6 Terms of lease.

Subpart 3585—White Mountains Nation Recreation Area, Alaska

3585.0-3 Authority.
3585.1 Lands to which applicable.
3585.2 Other applicable regulations.
3585.2-1 Leasable minerals.
3585.2-2 Hardrock minerals.
3585.3 Mining claimant preference r leases.
3585.3-1 Who may obtain a mining cla ant preference right lease.
3585.3-2 Application.
3585.4 Leases.
3585.4-1 Survey for leasing.
3585.4-2 Terms and conditions.
3585.4-3 Relinquishment of claims.
3585.5 Exploration license.
3585.5-1 Exploration license.
3585.5-2 Other applicable regulations.
3585.5-3 Exploration plan.
3585.5-4 Notice of exploration.
3585.5-5 Contents of notice.
3585.5-6 Publication and posting of noti
3585.5-7 Notice of participation.

Sec.
3585.5-8 Decision on plan and participation.
3585.5-9 Submission of data.

Subpart 3586—Sand and Gravel in Nevada

3586.1 Applicable law and regulations.
3586.2 Existing leases.
3586.3 Transfers of lease.

AUTHORITY: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of June 8, 1926 (30 U.S.C. 291-293); the Act of March 3, 1933, as amended (47 Stat. 1487); Sec. 10, Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of October 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2—460mm-4); the Independent Offices Appropriations Act (31 U.S.C. 9701).

SOURCE: 51 FR 15256, Apr. 22, 1986, unless otherwise noted.

Subpart 3581—Gold, Silver, or Quicksilver in Confirmed Private Land Grants

§ 3581.0-3 Authority.

Authority for leasing gold, silver, or quicksilver in confirmed private land grants is shown in § 3500.0-3(c)(1) of this title.

§ 3581.1 Lands to which applicable.

The regulations in this subpart apply to lands in private land claims patented pursuant to decrees of the Court of Private Land Claims where the grant did not convey the rights to deposits of gold, silver and quicksilver and where the grantee has not otherwise become entitled in law or in equity to the deposits.

§ 3581.2 Who may obtain a lease.

Applications shall only be filed by, and leases issued to, the owner of the lands under the confirmed land grant; that is, the original grantee or his/her record transferee or successor in title.

§ 3581.3 Application for lease.

(a) Applications for leases shall be filed in triplicate in the proper BLM office and may include all or any part of the grant for which the applicant holds title on the date of the application. No specific form is required.

(b) Applications shall set forth the name and address of the applicant, describe the lands in which the deposits occur by legal subdivision of the public surveys, if so surveyed, otherwise by metes and bounds; or if for the entire area in the grant, the name of the grant, area and date of patent shall suffice. The mineral deposits also shall be fully described, giving character, mode of occurrence, nature of the formation, kind and character of associated minerals, if any, proposed mining methods, estimate of amount of investment necessary for successful operation of the mine(s) contemplated, estimated amount of production of gold, silver and quicksilver, or any of them, and such other pertinent information as the applicant may desire to set forth, including what he/she considers a reasonable royalty rate under the lease.

(c) The applicant also shall file with his/her application a duly authenticated abstract of title showing present ownership of the lands or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

§ 3581.4 Leases.

§ 3581.4-1 Lease terms.

The lease shall be issued for a period of 20 years with a preference right in the lessee to renew for a 10-year term at the end of the initial term and at the end of each 10-year period thereafter.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3581.4-2 Rate of royalty; investment determined.

If the authorized officer finds the application sufficient to authorize the issuance of a lease, he/she shall establish a rate of royalty of not less than 5 percent or more than 12½ percent of the value of the output of gold, silver or quicksilver at the mine and also shall establish the amount of investment required under the lease.

§ 3581.4-3 Lease form and execution.

A lease on a form approved by the Director shall be furnished to the applicant, who shall be allowed 30 days from notice within which to execute and return the lease to the proper BLM office and to furnish the required bond.

§ 3581.5 Bond.

Prior to lease issuance, the lessee shall furnish a bond of not less than $2,000 conditioned upon compliance with all terms and conditions of the lease, including the prescribed investment requirement. The authorized officer reserves the right to increase the bond amount.

Subpart 3582—National Park Service Areas

§ 3582.0-3 Authority.

Authority for leasing mineral deposits within certain national recreation areas administered by the National Park Service is found in § 3500.0-3(c)(3) of this title.

§ 3582.1 Other applicable regulations.

§ 3582.1-1 Leasable minerals.

Except as otherwise specifically provided in this subpart, leasing of deposits of leasable minerals shall be governed by regulations in parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3582.1-2 Hardrock minerals.

Except as otherwise specifically provided in this subpart, leasing of deposits of hardrock minerals shall be governed by regulations in parts 3500 and 3560 of this title.

§ 3582.2 Lands to which applicable.

§ 3582.2-1 Boundary maps.

The areas subject to the regulations in this subpart are those areas of lands and water which are shown on the following maps on file and available for public inspection in the Office of the Director of the National Park Service
and in the Superintendent's offic
each area. The boundaries of t
areas may be revised by the Secre
as authorized in the Acts cited u
§ 3500.0-3(c)(3) of this title.

(a) Lake Mead National Recrea
Area—the map identified as "bou
ry map 8360—80013A, revised Dec
ber 1979."

(b) Whiskeytown Unit of the W
keytown-Shasta-Trinity Nati
Recreation Area—the map identi
as "Proposed Whiskeytown-Sha
Trinity National Recreation Ar
numbered BOR-WST 1004, dated J
1963.

(c) Ross Lake and Lake Chelan
tional Recreation Areas—the
identified as "Proposed Managem
Units. North Cascades, Washingto
numbered NP-CAS—7002, dated O
ber 1967.

(d) Glen Canyon National Rec
tion Area—the map identified
"Boundary Map Glen Canyon Nati
al Recreation Area," numbered GL
91,006, dated August 1972.

[51 FR 15213, Apr. 22, 1986; 51 FR 2
July 11, 1986]

§ 3582.2-2 Excepted areas.

The following areas shall not
opened to mineral leasing:

(a) *Lake Mead National Recreati*
Area. (1) All waters of Lakes Mead a
Mohave and all lands within 300 fe
of those lakes measured horizonta
from the shoreline at maximum wat
surface elevations.

(2) All lands within the area of
pervision of the Bureau of Reclam
tion around Hoover and Davis Dam
and all lands within any develop
and/or concentrated public use area
other area of outstanding recreation
significance as designated by the S
perintendent on the map (NRA-L
2291A, dated July 1966) of Lake Me
National Recreation Area which
available for inspection in the Offic
of the Superintendent.

(b) *Whiskeytown Unit of the Whi*
keytown-Shasta-Trinity Nation
Recreation Area. (1) All waters
Whiskeytown Lake and all land
within 1 mile of that lake measure
from the shoreline at maximum su
face elevation.

(2) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611-20, 004B, dated April 1976 entitled "Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area." This map is available for public inspection in the Office of the Superintendent.

(3) All lands within section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian.

(c) *Ross Lake and Lake Chelan National Recreation Areas.* (1) All of Lake Chelan National Recreation Area.

(2) All lands within one-half mile of Gorge, Diablo and Ross Lakes measured from the shoreline at maximum surface elevation.

(3) All lands proposed for or designated as wilderness.

(4) All lands within one-half mile of State Highway 20.

(5) Pyramid Lake Research Natural Area and all lands within one-half mile of its boundaries.

(d) *Glen Canyon National Recreation Area.* Those areas closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,002A, dated March 1980, entitled "Mineral Management Plan—Glen Canyon National Recreation Area." This map is available for public inspection in the Office of the Superintendent and the Offices of the State Directors, Bureau of Land Management, Arizona and Utah.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

§ 3582.3 Consent and consultation.

Any mineral lease or permit shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall be granted only upon a determination by the Regional Director that the activity permitted under the lease or permit shall not have significant adverse effect upon the resources or administration of the area pursuant to the authorizing legislation for the area. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the area, to preserve their use for public recreation and subject to the condition that site specific approval of any activity on the lease or permit shall be given only upon a concurrence by the Regional Director. All lease applications for reclamation withdrawn lands also shall be submitted to the Bureau of Reclamation for review.

Subpart 3583—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area

§ 3583.0-3 Authority.

Authority for leasing mineral deposits within the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area administered by the Forest Service is cited in § 3500.0-3(c)(4) of this title.

§ 3583.1 Other applicable regulations.

§ 3583.1-1 Leasable minerals.

Except as otherwise specifically provided in this subpart, leasing of deposits of leasable minerals shall be governed by regulations in parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3583.1-2 Hardrock minerals.

This subpart governs the leasing of hardrock minerals in the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area. The terms and conditions of hardrock leases issued under this subpart shall be the same as those set out for hardrock leases in subpart 3561 of this title, except as specifically modified in this subpart.

§ 3583.2 Consent of Secretary of Agriculture.

Any mineral lease for lands subject to this subpart shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he/she may prescribe after he/she finds that such disposition would not have significant adverse effects on the purpose of the Central

Valley Project or the administration of the recreation area.

§ 3583.3 Applications for hardrock mineral leases.

No specific form is required. An application shall include the applicant's name and address, a statement of holdings in accordance with subpart 3502 of this title, a description of the lands in accordance with subpart 3501 of this title, and the name of the mineral for which the lease is desired. The applicant shall state whether the mineral applied for can be developed in paying quantities, stating the reasons therefor, and shall furnish such facts as are available to him/her respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. Each application shall be filed in triplicate in the proper BLM office and shall be accompanied by a nonrefundable filing fee of $25.

§ 3583.4 Hardrock mineral leases.

§ 3583.4-1 Leasing units.

Leasing units may not exceed 640 acres consisting, if the lands are surveyed, of legal subdivisions in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions, described by metes and bounds and connected to a corner of the public survey by courses and distances. The authorized officer may prescribe a lesser area for any mineral deposit if such lesser area is adequate for an economic mining operation.

§ 3583.4-2 Royalties, rentals and minimum royalties.

Rentals and royalties shall be determined by the authorized officer on the basis of the fair market value, but in no event shall be less than:

(a) A rental of 50 cents per acre or fraction thereof payable in advance until production is obtained.

(b) A minimum royalty of $1 per acre or fraction thereof payable in advance after production is obtained.

(c) A production royalty of 2 perc of the amount or value of the mine mined, the exact amount of royalty be fixed prior to the issuance of lease.

§ 3583.4-3 Special terms and condition

Each lease shall contain provisio for the following:

(a) Diligent development of leased property, except when op ations are interrupted by strikes, t elements or casualties not attributal to the lessee, unless operations s suspended upon a showing that t lease cannot be operated except at lo because of unfavorable market con tions;

(b) Occupation and use of the su face shall be restricted to that whic is reasonably necessary for the expl ration, development and extraction the leased minerals, subject to an special rules to protect the values the recreation area;

(c) No vegetation shall be destroye or disturbed except where necessary t mine and remove the minerals;

(d) Operations shall not be conducted in such a manner as to adversel affect the purpose of the Centra Valley Project through dumping drainage or otherwise;

(e) Structures shall not be erected or roads or vehicle trails opened or constructed without first obtaining written permission from an authorized officer or employee of the Forest Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition satisfactory to the officer in charge of the area so long as it is used by the permittee or his/her successor;

(f) Reservation of the right to add additional terms to the lease when deemed necessary by the authorized officer or employee of the Forest Service for the protection of the surface, its resources and use for recreation.

§ 3583.4-4 Duration of lease.

Leases shall be issued for period of 5 years. Any lease in good standing upon which production in paying quantities has been obtained, shall be subject to renewal for successive 5 year terms on such reasonable terms as may be prescribed by the Secretary. An application for renewal shall be filed in triplicate in the proper BLM office at least 90 days prior to the expiration of the current lease term unless the lands included in the lease have been withdrawn at the expiration of such term.

§ 3583.4-5 Lease by competitive bidding.

Leases may be offered competitively for any lands applied for under this subpart without regard to the quantity or quality of the mineral deposit that may be present therein.

§ 3583.5 Disposal of materials.

Materials within the public lands covered by regulations in this subpart which are not subject to the provisions of §§ 3583.1-1 and 3583.1-2 of this title shall be subject to disposal under the Materials Act of 1947, as amended (30 U.S.C. 601 *et seq.*), subject to the conditions and limitations on occupancy and operations prescribed for leases in this subpart.

[51 FR 15213, Apr. 22, 1986; 51 FR 25204, July 11, 1986]

Subpart 3584—Reserved Minerals in Lands Patented to the State of California for Park or Other Public Purposes

§ 3584.0-3 Authority.

Authority for leasing reserved minerals in certain lands patented to the State of California for park or other purposes is cited under § 3500.0-3(c)(2) of this title.

§ 3584.1 Lands to which applicable.

The regulations in this subpart apply to certain lands patented to the State of California for park and other public purposes.

§ 3584.2 Minerals to be leased.

Leasable and hardrock minerals are subject to lease under this subpart.

§ 3584.3 Other applicable regulations.

Subject to regulations in this subpart, the regulations in parts 3500, 3510, 3520, 3530, 3540, 3550 and 3560 of this title shall govern the leasing of all leasable and hardrock minerals within the area.

[51 FR 15213, Apr. 22, 1986; 51 FR 25205, July 11, 1986]

§ 3584.4 Notice of application.

The authorized officer shall notify the surface owner of each application received. Notice of any proposed competitive lease sale shall be given to the surface owner prior to publication of notice of sale. Should the surface owner object to leasing of any tract for reasons determined by the authorized officer to be satisfactory, the application shall be rejected and the lands shall not be offered for lease sale.

§ 3584.5 Protection of surface.

All leases issued pursuant to this subpart shall be conditioned upon compliance by the lessee with all the laws, rules and regulations of the State of California for the safeguarding and protection of plant life, scenic features and park or recreational improvements on the lands, where not inconsistent with the terms of the lease or this section. The lease also shall provide that any mining work performed upon the lease shall be located in accordance with any requirements of the State necessary for the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property shall be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine shall be on a route approved in writing by the State's authorized representative.

§ 3584.6 Terms of lease.

Leases for hardrock minerals shall issue for a period of 5 years with a preference in the lessee for renewal for a term of 5 years at the end of the initial term and at the end of each 5 year period thereafter (See subpart 3566).

Subpart 3585—White Mountains National Recreation Area, Alaska

§ 3585.0-3 Authority.

(a) Authority for leasing minerals in the White Mountains National Recreation Area—Alaska is found in § 3500.0-3(c)(5) of this title.

(b) Authority for approving exploration licenses is section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3585.1 Lands to which applicable.

The lands subject to the regulations in this subpart are within the White Mountains National Recreation Area—Alaska which have been opened to mineral leasing and development pursuant to the findings in the land use plan for the area that such use and development would be compatible with, or would not significantly impair, public recreation and conservation of the scenic, scientific, historic, fish and wildlife or other values contributing to public enjoyment. The land use plan is on file and available for public inspection in the Bureau's Fairbanks District Office.

§ 3585.2 Other applicable regulations.

§ 3585.2-1 Leasable minerals.

Leasing of deposits of leasable minerals shall be governed by the applicable regulations in parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3585.2-2 Hardrock minerals.

Expect as otherwise specifically provided in §§ 3585.3 and 3585.4 of this title for mining claimant preference right leases, the regulations in parts 3500 and 3560 of this title shall govern the leasing of hardrock minerals.

§ 3585.3 Mining claimant preference right leases.

§ 3585.3-1 Who may obtain a mining claimant preference right lease.

Where, consistent with the land use plan, the Secretary has opened the area to mineral leasing and development, the holder of an unperfected mining claim within the White Mountains National Recreation Area—Alaska which was, prior to November 16, 1978, located, recorded and maintained in accordance with applicable Federal and State laws on lands located within the recreation area is entitled to a lease for the removal of the hardrock minerals from the mining claim(s), provided such mining claimant submits a timely application.

§ 3585.3-2 Application.

(a) An application for a mining claimant preference right lease shall be filed in triplicate in the Fairbanks District Office, Bureau of Land Management, P.O. Box 1150, Fairbanks, Alaska 99707, by the holder of an unperfected mining claim(s), within 2 years from the date the lands are opened to mineral leasing and development.

(b) No specific form is required.

(c) Each application shall be signed in ink by the applicant and shall include the following:

(1) The applicant's name and address;

(2) The serial number for each claim for which the application is made;

(3) The name of the mineral(s) for which the lease is sought; and

(4) A separate map on which the claim(s) is clearly marked.

(d) A single application may embrace any number of unperfected mining claims provided that, in the aggregate, the claims do not exceed 640 acres. The claims shall be contiguous and shall be located entirely within an area 6 miles square. Multiple applications may be submitted.

§ 3585.4 Leases.

§ 3585.4-1 Survey for leasing.

Prior to the issuance of a lease under this subpart, the applicant, at his/her own expense, shall be required to have a correct survey made under authority of a cadastral engineer, such survey to show the exterior surface boundaries of the entire lease tract, not each individual mining claim where more than one claim is involved, which boundaries are to be distinctly marked by monuments on the ground. Application for authorization of survey shall be made in accordance with subpart 1821 of this title.

[51 FR 15213, Apr. 22, 1986; 51 FR 25205, July 11, 1986]

§ 3585.4-2 Terms and conditions.

Leases shall be issued on a form approved by the Director and under such terms and conditions as prescribed in the lease form and subpart 3561 of this title. Where deemed necessary by the authorized officer, special lease stipulations also shall be included for the protection of the surface, its resources and use for recreation.

§ 3585.4-3 Relinquishment of claims.

Prior to the issuance of a lease, the applicant shall relinquish in writing any right or interest in his/her mining claim(s) as of the date the lease covering such claim(s) becomes effective.

§ 3585.5 Exploration license.

§ 3585.5-1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known hardrock mineral deposits which are not under lease or within an area subject to application and lease under § 3585.3 of this title to obtain geologic, environmental and other pertinent data concerning such deposits. Exploration licenses do not grant the licensee any preference right to a lease.

§ 3585.5-2 Other applicable regulations.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under part 2920 of this title shall govern the issuance of exploration licenses.

§ 3585.5-3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3562.3-3 of this title. The approved exploration plan shall be attached to, and made a part of, the license.

§ 3585.5-4 Notice of exploration.

Applicants for exploration licenses shall publish a Notice of Exploration inviting other parties to participate in exploration under license on a pro rata cost sharing basis.

§ 3585.5-5 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan will be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3585.5-6 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation nearest the area where the lands are located.

(b) The authorized officer shall post the notice in the Bureau's Alaska State Office and in the Fairbanks District Office for 30 days.

§ 3585.5-7 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting of the Notice of Exploration.

§ 3585.5-8 Decision on plan and participation.

(a) The authorized officer may issue the exploration license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

(b) Upon application by the participants, a modification of the exploration plan may be approved by the authorized officer.

[51 FR 15213, Apr. 22, 1986; 51 FR 25205, July 11, 1986]

§ 3585.5-9 Submission of data.

The licensee shall furnish the authorized officer with copies of all data obtained during exploration. All data shall be considered confidential and not made public until the areas have been leased or until the authorized officer determines that public access to the data is not exempt from disclosure under the Freedom of Information Act, whichever occurs first.

Subpart 3586—Sand and Gravel in Nevada

§ 3586.1 Applicable law and regulations.

The Act of June 8, 1926 (44 Stat. 708), authorizes the Secretary to dispose of the reserved minerals in certain lands patented to the State of Nevada under such conditions and under such rules and regulations as he/she may prescribe. Mineral materials, including deposits of sand and gravel, in such lands shall, except for leases granted and renewed under this subpart, be subject to disposal only under the regulations in Group 3600 of this title which implement the Materials Act of 1947, as amended (30 U.S.C. 601 *et seq.*).

§ 3586.2 Existing leases.

Existing sand and gravel leases may be renewed at the expiration of their initial term, and at the end of each successive 5-year period thereafter, for an additional term of 5 years, under such terms and conditions as the authorized officer determines to be reasonable. An application for renewal shall be filed in triplicate in the proper BLM office within 90 days prior to the expiration of the lease term and be accompanied by a nonrefundable filing fee of $25. Prior to renewal of a lease, the lessee shall be required to file a new bond and remit advance rental for the first year of the renewal lease at the rate prescribed by the authorized officer. The rental payment shall not be less than $20. The lease shall be renewed only upon application of the lessee of record. The authorized officer shall not renew any lease that is not producing sand and gravel or is not part of an existing sand and gravel mining operation.

§ 3586.3 Transfers of lease.

Leases may be transferred in whole or in part. The regulations in subpart 3506 of this title shall govern all such transfers.

PART 3590—SOLID MINER (OTHER THAN COAL) EXPLO TION AND MINING OPERATION

NOTE: There are many leases and ag ments currently in effect, and which remain in effect, involving Federal le which specifically refer to the United St Geological Survey, Minerals Managem Services or the Conservation Divis These leases and agreements also often s cifically refer to various officers as Super sor, Conservation Manager, Deputy Cons vation Manager, Minerals Manager a Deputy Minerals Manager. In additio many leases and agreements specifica refer to 30 CFR part 231 or specific sectio thereof. Those references shall now me the Bureau of Land Management or Min als Management Service, as appropriate.

Subpart 3590—Solid Minerals (Other th Coal) Exploration and Mining Operation General

Sec.
3590.0-1 Purpose.
3590.0-2 Policy.
3590.0-3 Authority.
3590.0-5 Definitions.
3590.0-7 Scope.
3590.1 Confidentiality of information.
3590.2 Responsibility of the authorized of ficer.

Subpart 3591—General Obligations of Lessee Licensees and Permittees

3591.1 General obligations of lessees, li censes and permittees.
3591.2 Forms and reports.

Subpart 3592—Plans and Maps

3592.1 Operating plans.
3592.2 Maps of underground workings an surface operations.
3592.3 Production maps.

Subpart 3593—Bore Holes and Samples

3593.1 Core or test hole cores, samples, cu tings.

Subpart 3594—Mining Methods

3594.1 Ultimate maximum recovery.
3594.2 Support pillars.
3594.3 Boundary pillars and isolated blocks.
3594.4 Development on leased lands through adjoining mines as part of a mining unit.

3594.5 Minerals soluble in water; brines; minerals taken in solution.

Subpart 3595—Protection Against Mining Hazards

3595.1 Surface openings.
3595.2 Abandonment of underground workings.

Subpart 3596—Waste From Mining or Milling

3596.1 Milling.
3596.2 Disposal of waste.

Subpart 3597—Production Records

3597.1 Books of account.
3597.2 Audits.

Subpart 3598—Inspection and Enforcement

3598.1 Inspection of underground and surface conditions; surveying, estimating and study.
3598.2 Issuance of orders.
3598.3 Service of notices, instructions and orders.
3598.4 Enforcement orders.
3598.5 Appeals.

AUTHORITY: The Mineral Leasing Act as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-359); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291-293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of August 4, 1939 (43 U.S.C. 387); the Act of October 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of November 8, 1965 (16 U.S.C. 90c *et seq.*); the Act of October 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm-2-460mm-4); the Independent Offices Appropriation Act (31 U.S.C. 9701); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a-396q); the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

SOURCE: 53 FR 39461, Oct. 7, 1988, unless otherwise noted.

Subpart 3590—Solid Minerals (Other Than Coal) Exploration and Mining Operations—General

§ 3590.0-1 Purpose.

The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing, development, mining and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize or correct damage to the environment—land, water and air—and avoid, minimize or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

§ 3590.0-2 Policy.

The regulations in this part are administered under the direction of the Director, Bureau of Land Management.

§ 3590.0-3 Authority.

Authority for carrying out the regulations in this part is set out in § 3500.0-3 of this title, unless otherwise noted.

§ 3590.0-5 Definitions.

As used in this part, the term:

(a) *Established requirements* means applicable law and regulations, lease, license or permit terms, conditions and special stipulations; approved mine or exploration plan requirements; and orders issued by the authorized officer.

(b) *General mining order* means a formal numbered order issued in a rulemaking procedure by the Department of the Interior which implements the regulations in this part and applied to mining and related operations.

(c) *Lessee* means any person, partnership, association, corporation or municipality that holds a mineral lease, through issuance or assignment, in whole or part, which lease is subject to the provisions of this part.

(d) *Licensee* means any person, partnership, association, corporation or municipality that holds a mineral license, through issuance or assignment, in whole or part, which license is subject to the provisions of this part.

(e) *Permittee* means any person, partnership, association, corporation or municipality that holds a mineral prospecting permit, through issuance, or assignment, in whole or part, which permit is subject to the provisions of this part.

(f) *Operator* means anyone authorized to conduct operations pursuant to the regulations in this part.

(g) *Reclamation* means the measures undertaken to bring about the necessary reconditioning or restoration of lands or water affected by exploration, mining, on-site processing operations or waste disposal in a manner which, among other things, will prevent or control on-site or offsite damage to the environment.

(h) *Ultimate maximum recovery* means that all portions of a leased Federal mineral deposit shall be mined, based on standard industry operating practices. The requirement to achieve ultimate maximum recovery does not in any way restrict the authorized officer's authority to ensure the conservative of the mineral resource and protection of the other resources.

§ 3590.0-7 Scope.

The regulations in this part govern operations for the discovery, testing, development, mining, reclamation, and processing of all minerals under lease, license or permit issued for Federal lands under the regulations in Group 3500 of this title or part 3140 of this title. For operations, involving the extraction of hydrocarbon from tar sands or oil shale by in-situ methods utilizing boreholes or wells, part 3160 of this title is applicable. These regulations also govern operations for all minerals on Indian tribal lands and allotted Indian lands leased under 25 CFR parts 211 and 212. Further, when the regulations in this part related to matters included in 25 CFR part 215 or 216 the regulations in this part shall be considered as supplemental and the regulations in 25 CFR part 215 or 216 shall govern to the extent of any inconsistencies.

§ 3590.1 Confidentiality of information

(a) Information obtained under t
part and on file shall be open
public inspection and copying dur
regular office hours, pursuant to
provisions of the Freedom of Inform
tion Act (5 U.S.C. 522(b)) and part 2
this title. Upon termination of a le
license, or permit, whether by expi
tions of its terms or otherwise, such
formation shall become available
the public.

(b) Information requested to be k
confidential under this section shall
clearly identified by the lessee, lice
ee or permittee by marking each pa
of documents submitted with t
words "Confidential Information"
the top of the page. All pages
marked shall be in a separ
volume(s) from other portions of t
submitted materials. All informati
not marked, "Confidential Inform
tion" shall be available for public i
spection, except that information pr
viously submitted and not marked w
be available for public inspection, on
in accordance with the Freedom of I
formation Act.

(c) Confidential and privileged info
mation obtained from a lessee und
this part on any Indian lease shall b
available only to the Tribe or allotte
Indian lessor, their designated age
or authorized Department of the Int
rior officials. Such information sha
not be made available to any othe
party without the express authoriz
tion of the Tribe or allotted India
lessor.

§ 3590.2 Responsibility of the authorize officer.

The authorized officer shall regulat
prospecting, exploration, testing, de
velopment, mining, processing oper
ations, and reclamation authorized
under this part. The duties of the au
thorized officer include, but are not
limited to, the following:

(a) Approval of operating plans and
plan modifications after preparation
of appropriate environmental analy
ses. Prior to approving a plan, the au
thorized officer shall consult with the
agency having jurisdiction over the
lands with respect to the surface pro-

tection and reclamation aspects of such plan.

(b) Inspection, at least quarterly, of leased, licensed or permitted lands where operations for discovery, testing, development, mining, reclamation, or processing of minerals are being conducted.

(c) Inspection and regulation of such operations for the purpose of preventing waste of mineral substances or damage to formations and deposits containing them, or damage to other formations, deposits or nonmineral resources affected by the operations.

(d) Inspecting exploration and mining operations to determine the adequacy of water management and pollution control measures taken for the protection of the quality of surface and groundwater resources and the adequacy of emission control measures taken for the protection of air quality. Such inspection shall be conducted as necessary and shall be fully coordinated with all State and Federal agencies having jurisdiction.

(e) Requiring operators to conduct operations in compliance with established requirements, including the law, regulations, the terms and conditions of the lease, license or permit, the requirements of approved exploration or mining plans, notices and orders and special stipulations.

(f) Obtaining the records of production of minerals and other information as necessary in order to verify that production reported to the Minerals Management Service for royalty purposes is an accurate accounting of minerals produced.

(g) Acting on applications for suspension of operations and production filed under § 3503.3 of this title and terminating such suspensions when conditions warrant. The authorized officer shall, upon request, assist in review of applications for suspension of operations and production on Indian lands which are filed under the provisions of 25 CFR parts 211 and 212.

(h) Upon receipt of a written request for cessation or abandonment of operations, inspecting the operations and determining whether they are in compliance with established requirements. The authorized officer shall, in accordance with applicable procedures, consult with, or obtain the concurrence of the State or Federal agency having jurisdiction over the lands with respect to the surface protection and reclamation requirements of the lease, license or permit and the exploration or mining plan.

(i) Acting on any mineral trespass on Federal or Indian lands in accordance with part 9230 of this title. The surface managing agency, if other than the BLM, shall be notified of any mineral trespass and the planned enforcement action.

(j) Implementing General Mining Orders and issuing other orders, making determinations and providing concurrence and approvals as necessary to implement or assure compliance with the regulations in this part. Any verbal orders, approvals or concurrences shall be promptly confirmed in writing.

Subpart 3591—General Obligations of Lessees, Licensees and Permittees

§ 3591.1 General obligations of lessees, licensees and permittees.

(a) Operations for the discovery, testing, development, mining or processing of minerals shall conform to the established requirements.

(b) The surface of lease, license or permit lands shall be reclaimed in accordance with established requirements. Lessees, licensees or permittees shall take such action as may be needed to avoid, minimize or repair:

(1) Waste and damage to mineral-bearing formations;

(2) Soil erosion;

(3) Pollution of the air;

(4) Pollution of surface or ground water;

(5) Damage to vegetation;

(6) Injury to or destruction of fish or wildlife and their habitat;

(7) Creation of unsafe or hazardous conditions;

(8) Damage to improvements; and

(9) Damage to recreation, scenic, historical and ecological values of the lands.

(10) Damage to scientifically significant paleontological and archaeological resources.

(c) All operations conducted under this part shall be consistent with Federal and State water and air quality standards.

(d) Inundations, fires, fatal accidents, accidents threatening damage to the mine, the lands or the deposits, or conditions which could cause water pollution shall be reported promptly to the authorized officer. The notice required by this section shall be in addition to any notice or reports required by 30 CFR part 56 or 57, or other applicable regulations.

§ 3591.2 Forms and reports.

The operator shall submit production and royalty forms and reports to the Minerals Management Service in accordance with 30 CFR parts 216 and 218.

Subpart 3592—Plans and Maps

§ 3592.1 Operating plans.

(a) Before conducting any operations under any lease(s), license(s), or permit(s), the operator shall submit to the authorized officer an exploration or mining plan which shall show in detail the proposed exploration, prospecting, testing, development or mining operations to be conducted. Exploration and mining plans shall be consistent with and responsive to the requirements of the lease, license or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations on Federal or Indian lease(s), license(s), or permits. The authorized officer shall consult with any other agency involved, and shall promptly approve the plans or indicate what additional information is necessary to conform to the provisions of the established requirements. No operations shall be conducted except as provided in an approved plan.

(b) The exploration plan shall be submitted in accordance with mineral specific regulations in Group 3500 of this title (See subparts 3512, 3522, 3532, 3542, 3552 and 3562) and in accordance with 25 CFR 216.6 for Indian lands.

(c) The lessee/operator shall subm 2 copies of the mining plan to the a thorized officer for approval. An ad tional copy shall be submitted if th surface managing agency is other th the BLM. The mining plan shall co tain, at a minimum, the following:

(1) Names, addresses and telephon numbers of those responsible for ope ations to be conducted under the a proved plan to whom notices an orders are to be delivered, names an addresses of lessees, Federal leas serial numbers and names and ad dresses of surface and mineral owner of record, if other than the Unite States;

(2) A general description of geologi conditions and mineral resources, with appropriate maps, within the area where mining is to be conducted;

(3) A copy of a suitable map or aerial photograph showing the topography, the area covered by the lease(s), the name and location of major topographic and cultural features and the drainage plan away from the affected area;

(4) A statement of proposed methods, of operating, including a description of the surface or underground mining methods, the proposed roads, the size and location of structures and facilities to be built, mining sequence, production rate, estimated recovery factors, stripping ratios and number of acres in the Federal or Indian lease(s), license(s), or permit(s) to be affected;

(5) An estimate of the quantity and quality of the mineral resources, proposed cutoff grade and, if applicable, proposed blending procedures for all leases covered by the mining plan;

(6) An explanation of how ultimate maximum recovery of the resource will be achieved for the Federal or Indian lease(s). If a mineral deposit, or portion thereof, is not to be mined or is to be rendered unminable by the operation, the operator/lessee shall submit appropriate justification to the authorized officer for approval;

(7) Appropriate maps and cross sections showing:

(i) Federal or Indian lease boundaries and serial numbers;

(ii) Surface ownership and boundaries;

(iii) Locations of existing and abandoned mines;

(iv) Typical structure cross sections;

(v) Location of shafts or mining entries, strip pits, waste dumps, and surface facilities; and

(vi) Typical mining sequence, with appropriate timeframes;

(8) A narrative which addresses the environmental aspects associated with the proposed mine which includes, at a minimum, the following:

(i) An estimate of the quantity of water to be used and pollutants that may enter any receiving waters;

(ii) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(iii) A description of measures to be taken to prevent or control fire, soil erosion, subsidence, pollution of surface and ground water, pollution of air, damage to fish or wildlife or other natural resources and hazards to public health and safety; and

(9) A reclamation schedule and the measures to be taken for surface reclamation of the Federal or Indian lease(s), license(s), or permit(s) that will ensure compliance with the established requirements. In those instances in which the lease requires the revegetation of an area affected by operations, the mining plan shall show:

(i) Proposed methods of preparation and fertilizing the soil prior to replanting;

(ii) Types and mixtures of shrubs, trees or tree seedlings, grasses or legumes to be planted; and

(iii) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees or tree seedlings, or combinations of grasses and trees;

(10) The method of abandonment of operations on Federal or Indian lease(s), license(s), and permit(s) proposed to protect the unmined recoverable reserves and other resources, including the method proposed to fill in, fence or close all surface openings which are a hazard to people or animals. Abandonment of operations also is subject to the provisions of subpart 3595 of this title; and

(11) Any additional information that the authorized officer deems necessary for approval of the plan.

(d)(1) Approved exploration and mining plans may be modified at any time to adjust to changed conditions or to correct an oversight. To obtain approval of an exploration or mining plan modification, the operator/lessee shall submit a written statement of the proposed modification and the justification for such modification. Any proposed exploration or mining plan modification(s) shall not be implemented unless previously approved by the authorized officer.

(2) The authorized officer may require a modification to the approved exploration or mining plan if conditions warrant.

(e) If circumstances warrant, or if development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator/lessee shall not, however, perform any operation except under an approved plan.

§ 3592.2 Maps of underground workings and surface operations.

Maps of underground workings and surface operations shall be drawn to a scale acceptable to the authorized officer. All maps shall be appropriately marked with reference to Government land marks or lines and elevations with reference to sea level. When required by the authorized officer, vertical projections and cross sections shall accompany plan views. Maps shall be based on accurate surveys and certified by a professional engineer, professional land surveyor or other professionally qualified person. Accurate copies of such maps or reproductive material or prints thereof shall be furnished by the operator to the authorized officer when and as required.

§ 3592.3 Production maps.

(a) The operator shall prepare maps which show mineral production from the leased lands. All excavations in each separate bed or deposit shall be shown in such a manner that the production of minerals for any royalty period can be accurately ascertained. Maps submitted for in situ or solution mining shall show pipelines, meter locations, or other points of measurement necessary for production verification. Production maps shall be submitted to the authorized officer at the end of each royalty reporting period or on a schedule determined by the authorized officer. As appropriate or required by the authorized officer, production maps also shall show surface boundaries, lease boundaries and topography, including subsidence resulting from mining activities.

(b) In the event of failure of the operator to furnish the maps required by this section, the authorized officer shall employ a licensed mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the operator/lessee.

(c) If the authorized officer believes any map submitted by an operator/lessee is incorrect, the authorized officer may cause a survey to be made, and if the survey shows the map submitted by the operator/lessee to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator/lessee.

Subpart 3593—Bore Holes and Samples

§ 3593.1 Core or test hole cores, samples, cuttings.

(a) The operator/lessee shall submit promptly to the authorized officer a signed copy of records of all core or test holes made on the lands covered by the lease, license or permit. The records shall be in a form that will allow the position and direction of the holes to be located on a map. The records shall include a log of all strata penetrated and conditions encountered, such as water, gas or unusual conditions. Copies of analysis of all samples shall be transmitted to the authorized officer as soon as obtained or as requested by the authorized officer. The operator/lessee shall furnish the authorized officer a detailed lithologic log of each drill hole and s other in-hole surveys or other lo produced. The core from test hol shall be retained by the operator lessee for 1 year or such other perio as may be directed by the authorize officer, and shall be available for i spection by the authorized office The authorized officer may cut suc cores and receive samples as appropr ate. Upon the request of the author ized officer, the operator/lessee shal furnish samples of strata, drill cut tings and mill products.

(b) Surface drill holes for develop ment or holes for prospecting shall b abandoned to the satisfaction of the authorized officer by cementing and/ or casing or by other methods ap proved in advance by the authorized officer and in a manner to protect the surface and not endanger any present or future underground operation or any deposit of oil, gas, other mineral substances or aquifer.

(c) Logs and analyses of development holes shall not be required unless specifically requested by the authorized officer. Drill holes may be converted to surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality of pressure of ground water or mine gases. Such conversion may be required by the authorized officer or requested by the operator/lessee and approved by the authorized officer. Prior to the termination of the lease, license or permit term, all surveillance wells shall be reclaimed unless the surface owner assumes responsibility for reclamation of such surveillance wells. The transfer of liability for reclamation shall be approved in writing by the authorized officer.

(d) When drilling on lands with potential for encountering high pressure oil, gas or geothermal formations, drilling equipment shall be equipped with blowout control devices acceptable to the authorized officer.

Subpart 3594—Mining Methods

§ 3594.1 Ultimate maximum recovery.

(a) Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the mineral deposits, consistent with the protection and use of other natural resources and the protection and preservation of the environment—land, water and air. All shafts, main exits and passageways, as well as overlying beds or mineral deposits that at a future date may be of economic importance, shall be protected by adequate pillars in the deposit being worked or by such other means as approved by the authorized officer.

(b) New geologic information obtained during mining regarding any mineral deposits on the lease shall be fully recorded and a copy of the record furnished to the authorized officer, if requested.

§ 3594.2 Support pillars.

Sufficient pillars shall be left during first mining to ensure the ultimate maximum recovery of mineral deposits prior to abandonment. All boundary pillars shall be 50 feet thick unless otherwise specified in writing by the authorized officer. Boundary and other main pillars shall be mined only with the written consent or by order of the authorized officer.

§ 3594.3 Boundary pillars and isolated blocks.

(a) If the ore on adjacent lands subject to the regulations in this part has been worked out beyond any boundary pillar, if the water level beyond the pillar is below the operator's/lessee's adjacent operations, and if no other hazards exist, the operator/lessee shall, on the written order of the authorized officer, mine out and remove all available ore in such boundary pillar, both in the lands covered by the lease and in the adjoining premises, when the authorized officer determines that such ore can be mined without undue hardship to the operator/lessee.

(b) If the mining rights in adjoining premises are privately owned or controlled, an agreement may be made with the owners of such interests for the extraction of the ore in the boundary pillars.

(c) Narrow strips of ore between leased lands and the outcrop on other lands subject to the regulations in this part and small blocks of ore adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions of paragraphs (a) and (b) of this section.

§ 3594.4 Development on leased lands through adjoining mines as part of a mining unit.

An operator/lessee may mine a leased tract from an adjoining underground mine on lands privately owned or controlled or from adjacent leased lands, under the following conditions:

(a) The only connections between the mine on lands privately owned or controlled and the mine on leased lands shall be the main haulageways, the ventilationways and the escapeways. Substantial concrete frames and fireproof doors that can be closed in an emergency and opened from either side shall be installed in each such connection. Other connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The authorized officer may waive any of the requirements of this paragraph when it is determined such waiver will not conflict with the regulations in 30 CFR part 57 and will promote maximum recovery of the ore.

(b) Free access for inspection of said connecting mine on lands privately owned or controlled shall be given at any reasonable time to the authorized officer.

(c) If an operator/lessee is operating on a lease through a mine on lands privately owned or controlled does not maintain the mine access in accordance with the safety regulations, operations on the leased lands may be stopped by order of the authorized officer.

§ 3594.5 Minerals soluble in water; brines; minerals taken in solution.

(a) In mining or prospecting deposits of sodium, potassium or other minerals soluble in water, all wells, shafts, prospecting holes and other openings shall be adequately protected with cement or other suitable materials against the coursing or entrance of water. The operator/lessee shall, when ordered by the authorized officer, backfill with rock or other suitable material to protect the roof from breakage when there is a danger of the entrance of water.

(b) On leased, license or permit lands containing brines, due precaution shall be exercised to prevent the deposit from becoming diluted or contaminated by the mixture of water or valueless solution.

(c) Where minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of lands contained in the approved mine plan without the written permission of the authorized officer.

(d) Any agreement necessary for allocation of brine production shall be made a part of the mine plan.

Subpart 3959—Protection Against Mining Hazards

§ 3595.1 Surface openings.

(a) The operator/lessee shall substantially fill in, fence, protect or close all surface openings, subsidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the lease, license or permit. Before abandonment of operations, all openings, including water discharge points, shall be closed to the satisfaction of the authorized officer.

(b) Reclamation or protection of surface areas no longer needed for operations will commence without delay. The authorized officer shall designate such areas where restoration or protective measures, or both shall be taken.

(c) Wells utilized for operations involving solution mining or brine extraction shall be abandoned in accordance with the approved mine plan.

§ 3595.2 Abandonment of underground workings.

No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the advance, written approval of the authorized officer.

Subpart 3596—Waste From Mi
Milling

§ 3596.1 Milling.

The operator/lessee shall c
milling operations in accordanc
the established requirements. T
erator/lessee shall use due dilig
the reduction, concentration o
ration of mineral substances
chanical or chemical proces
other means so that the percent
salts, concentrates, or other m
substances recovered and waste
ated shall be in accordance wi
approved practices.

§ 3596.2 Disposal of waste.

The operator/lessee shall disp
all wastes resulting from the m
reduction, concentration or sepa
of mineral substances in accor
with the terms of the lease, app
mining plan, applicable Federal,
and local law and regulations an
directions of the authorized offic

Subpart 3597—Production Rec

§ 3597.1 Books of account.

(a) Operators/lessees shall mai
records which show a correct ac
of all ore and rock mined, of al
put through the processing plan
all mineral products produced an
all ore and mineral products sold.
records shall show all relevant qu
analyses of ore minded, processe
sold and the percentage of the min
products recovered or lost.

(b) Production records shall be m
available for examination by the
thorized officer during regular b
ness hours. For the purpose of pro
tion verification, the authorized o
may request, and the operator/le
shall submit a copy of any portio
the production records not submi
to the Minerals Management Ser
as part of the operator's/lessee's p
duction reporting.

§ 3597.2 Audits.

(a) An audit of the operator's/l
see's accounts and books may be m
or directed by the Minerals Mana
ment Service in accordance with t

provisions of Title 30 of the Code of Federal Regulations.

(b) An audit of the operator's/lessee's accounts and production records by the service may be requested by the authorized officer if, during the process of verification of production, it is determined that an irregularity exists between reported production and production calculated by the authorized officer. Such audits shall be requested when the irregularity cannot be resolved between the operator/lessee and the authorized officer.

Subpart 3598—Inspection and Enforcement

§ 3598.1 Inspection of underground and surface conditions; surveying, estimating and study.

Operators/lessees shall provide means at all reasonable hours, either day or night, for the authorized officer to inspect or investigate the underground and surface conditions; to conduct surveys; to estimate the amount of ore or other methods of prospecting, exploration, testing, development, processing and handling; to determine the volumes, types, and composition of wastes generated; to determine the adequacy of measures for minimizing the amount of such wastes and the measures for treatment and disposal of such wastes; to determine reclamation procedures and progress; production records; environmental concerns; and to determine whether the operator/lessee is in compliance with established requirements.

§ 3598.2 Issuance of orders.

Orders and notices issued by the authorized officer shall be mailed by certified mail, return receipt requested, to the operator/lessee at the address furnished in the exploration or mining plan. The operator/lessee shall notify the authorized officer of any change of address or operator/lessee name.

§ 3598.3 Service of notices, instructions and orders.

The operator/lessee shall be considered to have received all notices and orders that are mailed by certified mail and a receipt received by the authorized officer. Verbal orders and notices may be given to officials at the mine but shall be confirmed in writing in accordance with § 3598.2 of this title.

§ 3598.4 Enforcement orders.

(a) If the authorized officer determines that an operator/lessee has failed to comply with established requirements, and such noncompliance does not threaten immediate, serious or irreparable damage to the environment, the mine or deposit being mined, or other valuable mineral deposits or other resources, the authorized officer shall serve a notice of noncompliance upon the operator and lessee by delivery in person or by certified mail, return receipt requested. Failure of the operator/lessee to take action in accordance with the notice of noncompliance shall be grounds for the authorized officer to issue an order to cease operations or initiate legal proceedings to cancel the lease under § 3509.4 of this title, or, for Indian leases, recommend to the Bureau of Indian Affairs that action be taken in accordance with 25 CFR part 211.

(b) A notice of noncompliance shall specify how the operator/lessee has failed to comply with established requirements, and shall specify the action which shall be taken to correct the noncompliance and the time limits within which such action shall be taken. The operator/lessee shall notify the authorized officer when noncompliance items have been corrected.

(c) If, in the judgment of the authorized officer, the failure to comply with the established requirements threatens immediate, serious or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the authorized officer may, either in writing or orally with written confirmation, order the cessation of operations without prior notice.

§ 3598.5 Appeals.

Orders or decisions issued under the regulations in this part may be appealed as provided in part 4 of this title. Orders issued under § 3598.4(c) of this title shall be effective during the pendency of any appeal.

Subpart 3599—Late Payment or Underpayment of Charges

§ 3599.1 Late payment or underpayment charges.

(a) The failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the Minerals Management Service (MMS) of the amount past due plus a late payment charge. Exceptions to this late payment charge may be granted when estimated payments have already been made timely and otherwise in accordance with instructions provided by MMS to the payor. However, late payment charges assessed with respect to any Indian lease, permit, or contract shall be collected and paid to the Indian or tribe to which the overdue amount is owed.

(b) Late payment charges are assessed on any late payment or underpayment from the date that the payment was due until the date on which the payment is received in the appropriate MMS accounting office. Payments received after 4 p.m. local time on the date due will be acknowledged as received on the following workday.

(c) Late payment charges are calculated on the basis of a percentage assessment rate. In the absence of a specific lease, permit, license, or contract provision prescribing a different rate, this percentage assessment rate is prescribed by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(d) This rate is available in the Treasury Fiscal Requirements Manual Bulletins that are published prior to the first day of each calendar quarter for application to overdue payments or underpayments in that new calendar quarter. The rate is also published in the Notices section of the FEDERAL REGISTER and indexed under "Fiscal Service/Notices/Funds Rate; Treasury Current Value."

(e) Late payment charges apply to all underpayments and payments received after the date due. Th charges include rentals; producti minimum, or advance royalties; ass ments for liquidated damages; adm istrative fees and payments by p chaser of royalty taken-in-kind or other payments, fees, or assessme that a lessee/operator/permitte payor/or purchaser of royalty tak in-kind is required to pay by a spe fied date. The failure to pay past d amounts, including late payme charges, will result in the initiation other enforcement proceedings.

[47 FR 22528, May 25, 1982. Redesignated 48 FR 36588, Aug. 12, 1983. Redesignated 51 FR 15212, Apr. 22, 1986]

Group 3600—Mineral Materials Disposal

NOTE: The information collection requir ments contained in parts 3600, 3610 an 3620 have been approved by the Office Management and Budget under 44 U.S. 3501 *et seq.* and assigned clearance numbe 1004-0103. The information is being collec ed to allow the authorized officer to dete mine if the applicant is qualified to pu chase or have free use of mineral materia on the public lands. The obligation to re spond is required to obtain a benefit.

PART 3600—MINERAL MATERIALS DISPOSAL: GENERAL

Subpart 3600—General

Sec.
3600.0-1 Purpose.
3600.0-3 Authority.
3600.0-4 Policy.
3600.0-5 Definitions.

Subpart 3601—Limitations

3601.1 Limitations; disposal of mineral ma terials.
3601.1-1 Valid existing rights and unpa tented mining claims.
3601.1-2 Authorization to use lands subject to material sales contracts and free use permits.
3601.1-3 Environmental protection and planning.

Subpart 3602—Disposal of Mineral Materials: General

3602.1 Mining and reclamation plans.
3602.1-1 Mining plans.
3602.1-2 Reclamation plans.

Sec.
3602.1-3 Approval and modification of mining and reclamation plans.
3602.2 Sampling and testing.
3602.3 Removal of improvements.

Subpart 3603—Unauthorized Use

3603.1 Unauthorized use.

Subpart 3604—Community Pits and Common Use Areas

3604.1 Non-exclusive disposal.
3604.2 Reclamation.

SOURCE: 48 FR 27011, June 10, 1983, unless otherwise noted.

Subpart 3600—General

§ 3600.0–1 Purpose.

The regulations in this part establish procedures for the exploration, development and disposal of mineral material resources as well as the protection of the environment of the public lands under permit or contract for sale or free use.

§ 3600.0–3 Authority.

(a) The Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*) provides:

(1) Authority for the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public lands of the United States, and from lands on which the mineral rights have been reserved to the United States, if the disposal of these materials (i) is not otherwise expressly authorized by law, including, but not limited to the Act of June 28, 1934, as amended (43 U.S.C. 315 *et seq.*) and the United States mining laws, (ii) is not expressly prohibited by the laws of the United States, and (iii) would not be detrimental to the public interest.

(2) That where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only with the consent of such Federal department or agency or of such State or local governmental unit;

(3) That disposal of mineral materials under the Materials Act may not be made from any lands in any national park or national monument or from any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

(4) Authority for the Secretary of the Interior, in his discretion to permit the free use of mineral materials by any Federal or State government agency, unit or subdivision, including municipalities, or any nonprofit association or corporation. The Materials Act *does not* permit these materials to be used for commercial or industrial purposes, resale or barter.

(b) Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) directs the Secretary:

(1) To manage public lands under the principles of multiple use and sustained yield in accordance with the land use plans developed under the Act (see subpart 1601 of this title).

(2) To regulate, through easements, permits, leases, licenses, published rules or other instruments deemed appropriate, the use, occupancy and development of public lands.

(3) To prevent unnecessary and undue degradation of the public lands.

(c) Section 2 of the Act of September 28, 1962 (76 Stat. 652) requires the Secretary of the Interior to provide by regulation that limited quantities of petrified wood may be removed without charges from public lands which he shall specify. Section 2 of the above Act applies to the same public lands as the Act of July 31, 1947, as amended (30 U.S.C. 601, 602). Specifically excluded are lands in any national park, or national monument, or any Indian lands.

(d) Section 304(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734) and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a) provide authorities for the collection of fees and the reimbursement of costs by the government.

§ 3600.0–4 Policy.

It is the policy of the Bureau of Land Management to permit the disposal of mineral material resources under the Bureau's jurisdiction at fair market value while ensuring that adequate measures are taken to protect the environment and minimize damage to public health and safety during the authorized exploration for and the removal of such minerals. No mineral material shall be disposed of if the Secretary determines that the aggregate damage to public lands and resources would exceed the benefits to be derived from the proposed sale or free use.

§ 3600.0–5 Definitions.

As used in this group, the term:

(a) *Bureau* means Bureau of Land Management, Department of the Interior.

(b) *Director* means the Director of the Bureau of Land Management.

(c) *Permittee* means any person, corporation, partnership and association, Federal, or State agency, unit, or subdivision, including municipalities, and non-profit organization or corporation or other entity that has been issued a contract or a free-use permit for the removal of mineral materials from the public lands.

(d) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(e) *Mineral material* includes, but is not limited to, *common varieties* of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials and petrified wood.

(f) *Public lands* means any lands and interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management without regard to how the United States acquired ownership, except lands held for the benefit of Indians, Aleuts, and Eskimos.

(g) *Community pit* means a site from which nonexclusive disposals of mineral materials can be made. The establishment of a community pit, when noted on the appropriate Bureau of Land Management records or posted on the ground, constitutes superior right to remove material against any subsequent claim or entr of the lands.

(h) *Common use area* means a gene ally broad geographic area from whic nonexclusive disposals of mineral materials can be made, with only neglig ble surface disturbance. The establishment of a common use area does no create a superior right to remove material as against any subsequent claim or entry of the lands.

(i) *Performance bond* means a bond to ensure compliance with the term of the contract and reclamation of the site as required by the authorized officer.

(j) *Act* means the Material Act of July 31, 1947, as amended, (30 U.S.C 601, *et seq.*).

(k) *Unnecessary or undue degradation* means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Unnecessary and undue degradation may involve failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed area; creation of a nuisance; or failure to comply with applicable environmental protection statutes and regulations.

Subpart 3601—Limitations

§ 3601.1 Limitations; disposal of mineral materials.

§ 3601.1–1 Valid existing rights and unpatented mining claims.

(a) Mineral material disposals may not be made by the authorized officer from public lands where:

(1) There are any unpatented mining claims which have not been cancelled by appropriate legal proceeding;

(2) Expressly prohibited by law.

§ 3601.1–2 Authorization to use lands subject to material sales contracts and free use permits.

(a) The permittee under contract of sale or permit for free use shall, unless otherwise provided, have the right to:

(1) Extract, remove, process and stockpile the material until the termination of the contract regardless of any subsequent appropriation under the provisions of the general land laws; and

(2) Use and occupy the described lands if it is determined by the authorized officer to be necessary for fulfillment of the contract until termination of that contract.

(b) The permittee shall be subject to the continuing rights of the United States to issue leases, permits and licenses for the use and occupancy of the lands, provided that this authorized use does not endanger or materially interfere with the production or removal of materials under contract.

(c) Any person that has a subsequent settlement, location, lease, sale or other appropriation under the general land laws, including the mineral leasing and mining law on lands covered by a material sale contract or free use permit shall be subject to the existing use authorization.

§ 3601.1–3 Environmental protection and planning.

The authorized officer shall not dispose of mineral material under this part where he/she determines that the proposed operation will cause unnecessary or undue degradation. Upon receipt of an application for sale or free use of mineral materials, the authorized officer shall complete an environmental review to ensure that unnecessary or undue degradation is prevented. Disposal actions which are categorically excluded from the NEPA process can be found in the Departmental manual. See 516 DM 6, Appendix 5. Decisions to authorize the disposal of mineral materials shall conform to approved land use plans, when available, in accordance with § 1610.5–3 of this title.

Subpart 3602—Disposal of Mineral Materials: General

§ 3602.1 Mining and reclamation plans.

The authorized officer may require the applicant to submit mining and reclamation plans prior to environmental review or issuance of a contract or permit. The mining plan and reclamation plan may be combined into one document.

§ 3602.1–1 Mining plans.

The applicant, when required by the authorized officer, shall prepare a mining plan that includes, but is not limited to:

(a) A map, sketch or aerial photograph showing the area applied for, the area to be disturbed, existing and proposed access and the names and locations of major topographic and known cultural features;

(b) A description of the proposed methods of operation and the periods during which the proposed activities will take place;

(c) A description of measures to be taken to prevent hazards to public health and safety and to prevent unnecessary and undue degradation.

§ 3602.1–2 Reclamation plans.

The applicant, when required by the authorized officer, shall submit a reclamation plan that includes, but is not limited to:

(a) A statement of the proposed manner and time for completion of the reclamation of the areas disturbed by the permittee's operations;

(b) A map or sketch which delineates the location and area to be reclaimed.

§ 3602.1–3 Approval and modification of mining and reclamation plans.

(a) Upon review of the mining and reclamation plans, the authorized officer shall promply notify the applicant of any deficiencies in the plan and of changes needed to prevent undue and unnecessary degradation of the lands, and hazards to public health and safety. Necessary changes shall be made as agreed by the authorized officer and the applicant.

(b) The permittee's operation shall not deviate from the plan approved by the authorized officer.

(c) An approved mining or reclamation plan may be modified by mutual agreement of the authorized officer and permittee at any time to adjust to changed conditions, or correct any oversight potentially resulting in undue or unnecessary degradation. Any change shall be consistent with the requirements under § 3601.1-3 of this title.

(d) The authorized officer shall review the proposed plan modification and within 30 days notify the permittee of its approval or needed changes.

§ 3602.2 Sampling and testing.

(a) Sampling and testing of mineral materials may be done pursuant to a letter of authorization issued by the authorized officer. These activities may be authorized prior to issuance of a sales contract or free use permit. The permittee shall submit his findings to the authorized officer. Information and data submitted and specifically identified by the permittee as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination in accordance with the provisions of the Freedom of Information Act. A determination concerning information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR part 2.

(b) A letter of authorization to sample and test mineral materials does not give the applicant a preference right to a sales contract or free use permit.

(c) The authorized officer may impose bonding and reclamation requirements on sampling and testing activities conducted pursuant to a letter of authorization.

§ 3602.3 Removal of improvements.

After the permit period expires, the authorized officer may grant the permittee no more than 90 days, excluding periods of inclement weather, to remove the equipment, personal property and any other improvements placed on the public lands by the permittee. Improvements such as roads, culverts and bridges may remain i place with the consent of the author ized officer. If the permittee fails t remove such equipment, persona property or any other improvements they shall become the property of the United States but the permittee shall remain liable for the cost of removal of such equipment, personal property and any other improvements and for restoration of the site.

Subpart 3603—Unauthorized Use

§ 3603.1 Unauthorized use.

Except when authorized by sale or permit under law and the regulations of the Department of the Interior, the extraction, severance or removal of mineral materials from public lands under the jurisdiction of the Department of the Interior is unauthorized use. Unauthorized users shall be liable for damages to the United States, and shall be subject to prosecution for such unlawful acts (see subpart 9239 of this title).

Subpart 3604—Community Pits and Common Use Areas

§ 3604.1 Non-exclusive disposal.

(a) Non-exclusive mineral material sales and free use under permit may be made from the same deposit within areas designated by the authorized officer, and consistent with other provisions under this part. These designated community pit sites or common use areas are not limited in size.

(b) The designation of a community pit site constitutes a superior right to remove the material as against any subsequent claim or entry of the lands.

(c) The designation of a common use area does not establish a superior right to remove the material as against any subsequent claim or entry of the land; however, a person authorized by permit or sale to remove mineral materials from a common use area has a superior right to remove the material as against any subsequent claim or entry on the lands.

(d) Sales from community pit sites or common use areas shall be made at fair market value. No mining or reclamation plan shall be required, but the permittee shall comply with the terms of the contract or permit to protect health and safety and prevent undue or unnecessary degradation of the public lands.

§ 3604.2 Reclamation.

(a) Permits or contracts for the extraction of mineral materials from community pits or common use areas shall not require reclamation but shall require payment of costs of reclamation, as provided in paragraph (b) of this section. However, the authorized officer may allow qualified permittees to perform interim or final reclamation, where needed, in lieu of paying reclamation charges.

(b) The reimbursement cost of reclamation shall be a proportionate share of the total estimated cost of reclamation, determined by using a ratio of the material extracted under the permit or contract to the total estimated volume of the material to be extracted from the site.

PART 3610—SALES

Subpart 3610—Mineral Material Sales

Sec.
3610.1 Procedures: General.
3610.1-1 Request for sale.
3610.1-2 Appraisal, reappraisal and measurements.
3610.1-3 Payments and termination by agreement.
3610.1-4 Refunds or credits.
3610.1-5 Performance and reclamation bonds.
3610.1-6 Assignments.
3610.1-7 Extension of time.
3610.2 Noncompetitive sales.
3610.2-1 Limitations in volume.
3610.2-2 Government programs.
3610.2-3 Federal mineral leases.
3610.2-4 Term of contract.
3610.3 Competitive sales.
3610.3-1 General.
3610.3-2 Advertising.
3610.3-3 Conduct of sales.
3610.3-4 Bid deposits.
3610.3-5 Contracts.
3610.3-6 Term of contract.

AUTHORITY: Minerals Management Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

SOURCE: 48 FR 27013, June 10, 1983, unless otherwise noted.

Subpart 3610—Mineral Material Sales

§ 3610.1 Procedures: General.

§ 3610.1-1 Request for sale.

Under the provisions of this part, the authorized officer may sell mineral materials upon receipt of a written request by any person who expresses an interest in mineral materials; or his own initiative.

§ 3610.1-2 Appraisal, reappraisal and measurements.

(a) No mineral materials shall be sold at less than fair market value as determined by appraisal.

(b) The authorized officer shall reappraise mineral materials disposed of under this part at intervals of not less than 2 years and shall adjust the contract unit price accordingly.

(c) Mineral materials may be measured by in-place volume or weight equivalent.

§ 3610.1-3 Payments and termination by agreement.

(a) Under a contract of sale for mineral materials, the permittee:

(1) Shall not remove mineral materials until advance payment is made;

(2) Shall for contract sales of $2,000 or less, pay the full amount at execution of the contract;

(3) May, when the sale exceeds $2,000, make installment payments of not less that $500 or 10 percent of the total purchase price, whichever is greater and shall: (i) For non-competitive sales, pay the first installment prior to or at the time the contract is awarded; (ii) for competitive sales, pay the first installment as a deposit at the time the bid is submitted, and (iii) pay each subsequent installment for non-competitive and competitive sales in an amount equal to the value of the mineral material removed prior to removal of the material;

(4) Shall pay tne total amount of the purchase price no later than 60 days before the expiration date of the contract;

(5) Shall annually produce an amount sufficient to pay to the United States a sum of money equal to the first installment, or in lieu of such

production, shall make an annual payment in the amount of the first installment. Annual payments shall be due on or before the anniversary date of the execution of the contract;

(6) Shall forfeit all monies paid when the required payments under the terms and conditions of the contract are not met. Failure to comply with the terms and conditions for payment shall constitute a breach of contract and the authorized officer may terminate the contract;

(7) Shall be required to make an annual report of production under the contract and to provide written verification of the amount of mineral materials removed upon request by the authorized officer to allow verification of payments.

(b) The permittee and the authorized officer may, by agreement, terminate the contract of sale at any time.

§ 3610.1-4 Refunds or credits.

(a) Refunds or credits may be made to the permittee:

(1) If upon expiration total payments made exceed the total value of mineral materials covered by the contract;

(2) If it is determined by the authorized officer that insufficient mineral materials existed in the sales area to fulfill the terms of the contract; or

(3) If materials paid for are unavailable as a result of termination of a contract, as provided in § 3610.1-3(b) of this title.

(b) Refunds of credits may not be made where the total payment made by a permittee does not exceed the administrative cost of processing the disposal action.

(c) Payments made in lieu of production, as provided in § 3610.1-3(a)(5), may be credited to future production, but not refunded, unless upon expiration, the total value of payments made exceeds the total value of mineral materials covered by the contract. Payments made in lieu of production prior to termination or relinquishment of contract will not be refunded.

§ 3610.1-5 Performance and reclamation bonds.

(a) The authorized officer shall require a performance bond of not less than $500 or 20 percent of the tota contract value, whichever is greater for contracts of $2,000 or more, excep for contract sales or permits mad from community pits when a reclamation fee is paid by the permittee.

(b) The authorized officer may require a reclamation or performance bond for contract sales of less than $2,000, but in no event shall the bond be for more than 20 percent of the total contract value.

(c) A performance and reclamation bond may be a:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department;

(2) Cash bond, with a power of attorney to the Secretary to convert such cash upon default in the performance of the terms and conditions of the contract or permit; or

(3) Negotiable Treasury bond of the United States of a par value equal to the amount of required bond, together with a power of attorney to the Secretary to sell such securities upon default.

§ 3610.1-6 Assignments.

(a) The permittee may not assign the contract, permit or any interest therein without the written approval of the authorized officer. The authorized officer shall ensure that all terms and conditions agreed upon are contained in the assignment and are assumed by the assignee.

(b) The authorized officer shall not approve any proposed assignments involving contract performances unless the assignee furnishes a performance bond as required by § 3610.1-5 of this title or obtains a written commitment from the previous surety to be bound by the assignment when approved.

(c) Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and be subject to all the obligations under the contract, and the permittee shall be released from any further liability under the contract.

§ 3610.1-7 Extension of time.

The authorized officer may grant a one-time extension not to exceed 1 year, if the permittee:

(a) Submits a written request that is received by the authorized officer no later than 30 days or earlier than 90 days prior to the expiration date of the contract; and

(b) Shows, in writing that the delay in removal of the mineral materials was due to causes beyond the control of and without fault or negligence of the permittee.

§ 3610.2 Noncompetitive sales.

§ 3610.2-1 Limitations in volume.

(a) When it is determined to be in the public interest, and where it is impracticable to obtain competition, the authorized officer may sell at not less than fair market value, without advertising or calling for bids, mineral materials not to exceed 100,000 cubic yards (or weight equivalent) in any individual sale.

(b) The authorized officer shall not approve noncompetitive sales that exceed the total aggregate of 200,000 cubic yards (or weight equivalent) made in any one State for the benefit of any one individual, partnership, corporation or entity in any period of twelve consecutive calendar months.

(c) The volume limitations in paragraphs (a) and (b) of this section shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipelines System or the Alaska Natural Gas Transportation System.

(d) The volume limitations contained in paragraphs (a) and (b) of this section shall not apply where the Director determines that circumstances make it impossible to obtain competition or where, because of an emergency situation affecting public property, health and safety, there is insufficient time to invite competitive bids.

[48 FR 27013, June 10, 1983, as amended at 51 FR 22079, June 18, 1986]

§ 3610.2-2 Government programs.

The authorized officer may sell mineral materials not exceeding 200,000 cubic yards (or weight equivalent) at not less than fair market value without advertising or calling for bids when:

(a) The authorized officer determines the sale to be in the public interest; and

(b) The materials are to be used in connection with a public works improvement program that requires urgent attention on behalf of a Federal, State or local govermental agency and that does not permit time required for advertising.

§ 3610.2-3 Federal mineral leases.

Where the materials are to be used in connection with the development of public lands under a mineral lease issued by the United States, the authorized officer may without calling for competitive bids, sell a volume of mineral materials not to exceed 200,000 cubic yards (or weight equivalent) to any one permittee in one State in any calendar year. No charge shall be made for mineral materials necessarily moved in the process of extracting minerals under Federal lease, as long as the materials remain within the boundaries of the lease and are used for lease development.

§ 3610.2-4 Term of contract.

The term for noncompetitive contracts for the sale of mineral materials shall not exceed 5 years, excluding extension and removal periods.

§ 3610.3 Competitive sales.

§ 3610.3-1 General.

(a) The authorized officer shall make sales, except those specified in subpart 3604 and § 3610.2 of this title, only after inviting competitive bids through publication and posting in conformance with § 3610.3 of this title.

(b) The authorized officer shall not hold sales sooner than 1 week after the last advertisement inviting competitive bids.

§ 3610.3-2 Advertising.

(a) When offering mineral materials for sale by competitive bidding, the authorized officer:

(1) Shall advertise the sale through publication in a newspaper of general circulation in the area where the ma-

terial is located, on the same day once a week for two consecutive weeks;

(2) May extend the period of a time for advertising; and

(3) Shall post a notice of sale in a conspicuous place in the office where bids are to be submitted.

(b) In the advertisement of sale, the authorized officer shall state:

(1) The location by legal description of the tract or tracts on which the material is being offered;

(2) The kind of materials being offered;

(3) The estimated quantities of materials being offered;

(4) The unit of measurement;

(5) The appraised prices;

(6) The time and place for receiving and opening of bids;

(7) The minimum deposit require;

(8) The access requirement;

(9) The method of bidding;

(10) The requirement that mining and reclamation plans shall be filed and that reclamation will be required if applicable;

(11) The bonding requirement;

(12) The location for inspection of contract terms and proposed stipulations;

(13) The office where additional information may be obtained; and

(14) Any additional information deemed necessary.

§ 3610.3-3 Conduct of sales.

(a) Bidding at competitive sales shall be by the submission of written sealed bids, oral bids or a combination of both, as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bid shall be determined by oral auction among the persons making high bids. If no oral bid is made which is higher than the sealed bids, the successful bidder shall then be determined by lot. In oral auctions, immediately after the high bid is announced, the person offering the high bid shall confirm that bid in writing.

(b) When it is in the interest of the Government to do so, the authorized officer may reject any or all bids and may waive minor deficiencies in the bids.

§ 3610.3-4 Bid deposits.

A person making a bid to purchas mineral materials shall submit a deposit in advance of the sale.

(a) Sealed bids shall be accompanie by a deposit. At oral auctions, persons making bids shall make the deposit prior to opening of the bidding. The amount of the deposit shall be $500 or 10 percent of the appraised value as specified in the sale advertisement, whichever is greater.

(b) Deposits may be in the form of cash, money orders, bank drafts, or cashier's or certified checks made payable to the Bureau of Land Management.

(c) The bid deposits of all persons making bids, except that of the successful bidder, shall be returned upon conclusion of the bidding.

(d) The deposit of the person making the successful bid shall be applied to the purchase price at the time the contract is signed by the authorized officer.

§ 3610.3-5 Contracts.

(a) The authorized officer may require the person making the high bid to furnish information that is necessary to determine his ability to fulfill the obligations of the contract. The contract shall be awarded by the authorized officer to the person making the highest bid, unless he is unwilling to accept the terms of the contract or unless all bids are rejected.

(b) Within 30 days after receipt of the contract, the person making the successful bid shall sign and return the contract, together with any required performance bond and mining and reclamation plan when applicable. The authorized officer may extend this period an additional 30 days upon written request of the applicant within the first 30-day period. If the person making the successful bid fails to comply within the first 30-day period, or an approved 30-day extension, the successful bidder shall forfeit the bid deposit as liquidated damages. The authorized officer may offer and award the contract for the amount of the high bid to the person making the next highest bid who is qualified and willing to accept the contract, upon the redeposit of the amount required under § 3610.3-4(a).

(c) The authorized officer shall make all sales on contract forms approved by the Director. The authorized officer may include in the contract such additional provisions as are deemed necessary to protect other resource values or prevent unnecessary and undue degradation of the public lands.

§ 3610.3-6 Term of contract.

The term for competitive contracts of sale for mineral materials shall not exceed 10 years, excluding extension or removal periods.

PART 3620—FREE USE

Subpart 3621—Free Use: General

Sec.
3621.1 Permits: General.
3621.1-1 Applications.
3621.1-2 Terms.
3621.1-3 Assignment.
3621.1-4 Conditions.
3621.1-5 Removal of materials by agent.
3621.1-6 Bond.
3621.1-7 Cancellation.
3621.2 Permits to governmental units and non-profit organizations.

Subpart 3622—Free Use of Petrified Wood

3622.1 Program: General.
3622.2 Procedures; permits.
3622.3 Designation of areas.
3622.4 Collection rules.

AUTHORITY: Minerals Management Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

SOURCE: 48 FR 27015, June 10, 1983, unless otherwise noted.

Subpart 3621—Free Use: General

§ 3621.1 Permits: general.

§ 3621.1-1 Applications.

An application for a free use permit shall be filed with the authorized officer on forms approved by the Director.

§ 3621.1-2 Terms.

The authorized officer may grant free use permits to any Federal, or State agency, unit or subdivision, including municipalities, for periods deemed appropriate, not to exceed 10 years. The authorized officer may issue free use permits not to exceed 1 year in duration to non-profit organizations, and may extend any free use permit for a single additional period not to exceed 1 year.

§ 3621.1-3 Assignment.

A free use permit may be assigned or transferred to persons or other entities listed in § 3621.1-2 of this title qualified to hold a free use permit with the written approval of the authorized officer.

§ 3621.1-4 Conditions.

(a) The authorized officer shall incorporate the provisions governing the selection, removal and use of the mineral materials in the free use permit.

(b) The authorized officer shall not issue a free use permit upon determination that the applicant owns or controls an adequate supply of suitable mineral materials that are readily available and can be mined in a manner which is economically and environmentally acceptable.

(c) Mineral materials obtained under a free use permit shall not be bartered or sold.

(d) The permittee shall not remove the mineral materials before a permit is issued or after a permit has expired.

§ 3621.1-5 Removal of materials by agent.

A free use permittee may allow an agent to extract the mineral materials. This agent shall not charge the permittee for the materials extracted, processed or removed, or receive mineral materials from the permit area as payment for services rendered, or as a donation or gift.

§ 3621.1-6 Bond.

The authorized officer may require a bond as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

§ 3621.1-7 Cancellation.

The authorized officer may cancel a permit if the permittee fails, after adequate notice, to observe the terms and conditions of the permit.

§ 3621.2 Permits to governmental units and non-profit organizations.

(a) The authorized officer may issue a free use permit to any Federal or State agency, unit or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided the applicant makes a satisfactory showing to the authorized officer that these materials will be used for a public project.

(b) The authorized officer may issue a free use permit to a non-profit organization or corporation for not more than 5,000 cubic yards (or weight equivalent) in any period of twelve consecutive months.

(c) Permits issued under this subpart shall constitute a superior right to remove the materials and shall continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

Subpart 3622—Free Use of Petrified Wood

§ 3622.1 Program: General.

(a) Persons may collect limited quantities of petrified wood for noncommercial purposes under terms and conditions consistent with the preservation of significant deposits as a public recreational resource.

(b) The purchase of petrified wood for commercial purposes is provided for in § 3610.1 of this title.

§ 3622.2 Procedures; permits.

No application or permit for free use is required except for specimens over 250 pounds in weight. The authorized officer may issue permits, using the procedures of subpart 3621 of this title, for the removal of such specimens if the applicant certifies that they will be displayed to the public in a museum or similar institution.

§ 3622.3 Designation of areas.

(a) All public lands administered by the Bureau of Land Management and the Bureau of Reclamation are open to or available for free use removal of petrified wood unless otherwise provided for by notice in the FEDER REGISTER. Free use areas under the ju risdiction of said Bureaus may b modified or cancelled by notices pub lished in the FEDERAL REGISTER.

(b) The heads of other Bureaus i the Department of the Interior ma publish in the FEDERAL REGISTER desig nations, modifications or cancellation of free use areas for petrified wood on lands under their jurisdiction.

(c) The Secretary of the Interior may designate, modify or cancel free use areas for petrified wood on public lands which are under the jurisdiction of other Federal departments or agencies, other than the Department of Agriculture, with the consent of the head of other Federal departments or agencies concerned, upon publication of notice in the FEDERAL REGISTER.

§ 3622.4 Collection rules.

(a) *General.* The authorized officer shall control the removal without charge of petrified wood from public lands using the following criteria:

(1) The maximum quantity of petrified wood that any one person is allowed to remove without charge per day is 25 pounds in weight plus one piece, provided that the maximum total amount that one person may remove in one calendar year shall not exceed 250 pounds. Pooling of quotas to obtain pieces larger than 250 pounds is not allowed.

(2) Except for holders of permits issued under subpart 3621 of this title to remove museum pieces, no person shall use explosives, power equipment, including, but not limited to, tractors, bulldozers, plows, power-shovels, semi-trailers or other heavy equipment for the excavation or removal of petrified wood.

(3) Petrified wood obtained under this section shall be for personal use and shall not be sold or bartered to commercial dealers.

(4) The collection of petrified wood shall be accomplished in a manner that prevents unnecessary and undue degradation of lands.

(b) *Additional rules.* The head of the agency having jurisdiction over a free use area may establish and publish additional rules for collecting petrified wood for noncommercial purposes to supplement those included in § 3622.4(a) of this title.

Group 3700—Multiple Use; Mining

NOTE: The information collection requirements contained in part 3730 of Group 3700 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0110. The information is being collected to permit the authorized officer to determine whether an applicant is qualified to hold a lease for the exploration, development and utilization of minerals on all public lands withdrawn for power development. The information will be used to make this determination. A response is required to obtain a benefit.

(See 48 FR 40890, Sept. 12, 1983)

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3710—Public Law 167; Act of July 23, 1955: General

Sec.
3710.0-3 Authority.

Subpart 3711—Common Varieties

3711.1 Provisions of act.

Subpart 3712—Proceedings Under the Act

3712.1 Restriction on use of unpatented mining claims.
3712.2 Publication of notice.
3712.2-1 Request for publication of notice to mining claimant.
3712.2-2 Evidence necessary to support a request for publication.
3712.2-3 Contents of published notice.
3712.2-4 Publication.
3712.2-5 Proof of publication.
3712.2-6 Service of notice.
3712.2-7 Service of copies; failure to comply.
3712.3 Failure of claimant to file verified statement.

Subpart 3713—Hearings

3713.1 Hearing procedures.
3713.2 Hearing: Time and place.
3713.3 Stipulation between parties.
3713.4 Effect of decision affirming a mining claimant's rights.

Sec.

Subpart 3714—Rights of Mining Claimants

3714.1 Recording by mining claimant of request for copy of notice.
3714.2 Waiver of rights by mining claimants.
3714.3 Protection of existing rights; exclusion of reservation in patents.

Subpart 3710—Public Law 167; Act of July 23, 1955: General

§ 3710.0-3 Authority.

The Act of July 23, 1955 (69 Stat. 367, 30 U.S.C. sec. 601), was enacted "to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said Act hereinafter more fully identified. The word "Act" when used in this subpart refers to the Act of July 23, 1955. Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947.

[35 FR 9731, June 13, 1970]

Subpart 3711—Common Varieties

§ 3711.1 Provisions of act.

(a) The Act in section 3 provides: A deposit of common varieties of sand, stone, gravel, pumice, pumicite or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties." This subsection does not relieve a claimant from any requirements of the mining laws.

[35 FR 9731, June 13, 1970]

Subpart 3712—Proceedings Under the Act

SOURCE: 35 FR 9732, June, 13, 1970, unless otherwise noted.

§ 3712.1 Restriction on use of unpatented mining claims.

(a) The Act in section 4 provides:

> Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.
>
> Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however,* That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided, further,* That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided, further,* That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.
>
> Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the Act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act, or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the Act where determination has been made pursuant to section 5 of the Act, that the locator's surface rights are limited as provided in section 4 of the Act, or where the owners have waived and relinquished all rights under section 6 of the Act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the Act. See § 3714.3 as to effect on existing rights.

(d) On mining claims subject to the provisions of the Act, timber may be used by the claimants only for the purposes permitted under the Act, and, except where timber is removed to provide clearance for operations or uses permitted under the Act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in part 5510 of this chapter.

§ 3712.2 Publication of notice.

§ 3712.2-1 Request for publication of notice to mining claimant.

(a) The Act in the first paragraph of section 5(a) provides as follows:

> The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the proper office of the Bureau of Land Management. No request for publication may include lands in more than one district.

§ 3712.2-2 Evidence necessary to support a request for publication.

(a) The second and third paragraphs of section 5(a) of the Act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for publication of the notice referred to in § 3712.2-1 as follows:

> The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting forth such fact, or, if any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.
>
> The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the Act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reaso ble inquiry and if it cannot be learned, the affidavit must show detail what inquiry or inquiries we made to obtain each such name a address. No definition of the terms " actual possession" or "engaged in th working of said lands" will be attemp ed here, but the affidavits shoul recite what evidences of occupancy o workings were found. The request fo publication must also be accompanie by a certificate executed as provide in the third paragraph of section 5(a and containing the information re quired by that paragraph to be fur nished. If there are no tract indexes as defined in the Act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5(a) to that effect must be furnished.

§ 3712.2-3 Contents of published notice.

Section 5(a) of the Act specifies in detail what the published notice shall contain, as follows:

> Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—
>
> (1) The date of location;
>
> (2) The book and page of recordation of the notice or certificate of location;
>
> (3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed either the section or sections which would probably embrace such mining claim whe the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;
>
> (4) Whether such claimant is a locator or purchaser under such location; and
>
> (5) The name and address of such claimant and names and addresses so far as known to the claimant of any other perso or persons claiming any interest or interests in or under such unpatented mining claim

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims.

§ 3712.2-4 Publication.

If the request for publication and the accompanying papers conform to the requirements of the Act, the Authorized officer or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semiweekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§ 3712.2-5 Proof of publication.

After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3712.2-6 Service of notice.

The last paragraph of section 5(a) of the Act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§ 3712.2-7 Service of copies; failure to comply.

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the Act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3712.3 Failure of claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See § 3712.2-4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in § 3712.2-7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

Subpart 3713—Hearings

Source: 35 FR 9734, June 13, 1970, unless otherwise noted.

§ 3713.1 Hearing procedures.

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the appeals and contests of the Department of the Interior and the Bureau of Land Management (part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§ 3713.2 Hearing: Time and place.

If any verified statement shall be filed by a mining claimant then the administrative law judge or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment. The administrative law judge shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such ve fied statement of the time and place such hearing at least 30 days in a vance thereof. The notice of hearin shall contain a statement specifyin the issues upon which evidence will submitted at the hearing. Such hea ing shall be held in the county wher the lands in question, or parts thereo are located unless the mining claiman agrees otherwise.

§ 3713.3 Stipulation between parties.

Where verified statements are filed asserting rights to an aggregate o more than twenty mining claims, any single hearing shall be limited to maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5(c) of the Act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3713.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the Act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

Subpart 3714—Rights of Mining Claimants

SOURCE: 35 FR 9734, June 13, 1970, unless otherwise noted.

§ 3714.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the Act provides as follows:

> Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—
>
> (1) The date of location;
>
> (2) The book and page of the recordation of the notice or certificate of location; and
>
> (3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3714.2 Waiver of rights by mining claimants.

Section 6 of the Act provides as follows:

> The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims. The execution and acknowledgement of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this Act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 3714.3 Protection of existing rights; exclusion of reservation in patents.

The Act in section 7 provides as follows:

> Nothing in this Act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this Act, or as a result of a waiver and relinquishment pursuant to section 6 of this Act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction not otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the Act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of § 3712.2-7, to file a verified statement in response to a published notice as provided in section 5(b) of the Act and § 3712.2-9; (b) it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the Act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIAL UPON PUBLIC LANDS VALUABLE FOR COAL

Subpart 3722—Report to Geological Survey

§ 3722.1 Annual report and payment requirements.

(a) The Act in section 1 provides in part as follows:

> That the claimant to any such mining location shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite mined or stripped in the recovery of such valuable source material during each calendar year and tender payment to him of 10 cents per ton thereon * * * subject to the recording and payment requirements * * *.

(b) Payments shall be by check, draft or money order, payable to the United States Geological Survey, accompanied by a report of the tons of lignite mined or stripped, whether disposed of or not in recovering the source material. Each report should show the name of the claim, identify the location, the calendar year for which payment is made and address of claimant.

(c) Tonnage reports and remittances for claims in Montana, North Dakota, South Dakota, and Northern Wyoming should be sent to the Regional Mining Supervisor, U.S. Geological Survey, Billings, Montana. As to claims in other states, the address of the Regional Mining Supervisor ma be obtained from the Director, U.S Geological Survey, Washington, DC 20244.

[35 FR 9735, June 13, 1970]

PART 3730—PUBLIC LAW 35 MINING IN POWERSITE WIT DRAWALS: GENERAL

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals: General

Sec.
3730.0-1 Purpose.
3730.0-3 Authority; lands opened.

Subpart 3731—Power Rights

3731.1 Power rights retained in the Unit States.

Subpart 3732—Withdrawals Other Than fo Powersite Purposes

3732.1 Act ineffective as to other wi drawals.

Subpart 3733—Risk of Operation

3733.1 Financial risk of operation.
3733.2 Liability of United States.

Subpart 3734—Location and Assessment Wo

3734.1 Owner of claim to file notice of lo tion and assessment work.

Subpart 3735—Prior Existing Mining Locatio

3735.1 No limitation or restriction of righ under valid claims located prior to wi drawal.
3735.2 No limitation of rights where clai ant in diligent prosecution of work wh future withdrawals made.

Subpart 3736—Mining Operations

3736.1 Placer locator to conduct no mini operations for 60 days.
3736.2 Hearing; notice of protest.

Subpart 3737—Use

3737.1 Mining claim and millsite use.

Subpart 3738—Surface Protection Requirements

3738.1 Bond or deposit required.
3738.2 Restoration of surface condition

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Subpart 3730—Public Law 359; Mining in Powersite Withdrawals: General

§ 3730.0-1 Purpose.

The Act of August 11, 1955 (69 Stat. 681), was enacted "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes". The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior. The expression "Act" shall mean the Act of August 11, 1955 (69 Stat. 681), cited in the Act as the "Mining Claims Rights Restoration Act of 1955".

[35 FR 9736, June 13, 1970]

§ 3730.0-3 Authority; lands opened.

(a) The Act in section 2 provides in part as follows:

> All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: * * * that nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The Act in the second proviso thereof provides:

> That locations made under the act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948 (62 Stat. 162).

[35 FR 9736, June 13, 1970]

Subpart 3731—Power Rights

§ 3731.1 Power rights retained in the United States.

(a) The Act in the first proviso provides as follows:

> That all power rights to such lands shall be retained by the United States.

(1) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

[35 FR 9736, June 13, 1970]

Subpart 3732—Withdrawals Other Than for Powersite Purposes

§ 3732.1 Act ineffective as to other withdrawals.

(a) The Act in section 2(c) provides as follows:

> Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the Act apply only to the extent that the lands are otherwise open to location.

[35 FR 9737, June 13, 1970]

Subpart 3733—Risk of Operation

§ 3733.1 Financial risk of operation.

The Act in section 3 provides in part as follows:

> Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

[35 FR 9737, June 13, 1970]

§ 3733.2 Liability of United States.

The Act in section 3 provides in part as follows:

> *Provided*, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

[35 FR 9737, June 13, 1970]

Subpart 3734—Location and Assessment Work

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The Act in section 4 provides as follows:

> The owner of any unpatented mining claim located on land described in section 2 of this act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assessment year, a statement as to any work done or improvements made during the previous assessment year.

(b) Neither section 4 nor any other provision of the Act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U.S.C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 3730.0-3(a) only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955, and prior to the withdrawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955, on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of an unpatented location coming under paragraph (b)(1) of this section, within sixty days from the date of location shall file in the proper office, a copy of the notice or certificate of location and within sixty days after the expiration of each assessment year, a statement as to the assessment work done or improvements made during that assessment year. For identification purposes only the copy of the location notice or certificate, filed in the land office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955.

(d) The owner of an unpatented location coming under either paragraph (b) (2) or (3) of this section, before August 11, 1955 shall have filed in the proper office a copy of the notice or certificate of location and within 60 days from the date of expiration of the assessment year which ended noon July 1, 1956 and within 60 days from the date of expiration of each succeeding assessment year, shall file a statement as to the assessment work done or improvements made during the previous assessment year.

[35 FR 9737, June 13, 1970]

Subpart 3735—Prior Existing Mining Locations

§ 3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

(a) The Act in section 5 provides:

> Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided*, That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the Act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraph (c) or (d) of § 3734.1 whichever is applicable.

[35 FR 9737, June 13, 1970]

§ 3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

(a) Under section 5 of the Act the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

[35 FR 9737, June 13, 1970]

Subpart 3736—Mining Operations

§ 3736.1 Placer locator to conduct no mining operations for 60 days.

(a) The Act in section 2(b) provides in part as follows:

> The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance with § 3734.1 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered or certified mail within 60 days from date of filing of the location notice.

[35 FR 9737, June 13, 1970]

§ 3736.2 Hearing; notice of protest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the provisions of appeals and contests of the Department of the Interior (part 1850 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the proper office wherein the notice of hearing is posted. Such notice, accompanied by a $10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The authorized officer shall forward a copy of each such notice that is filed to the mining locator prior to the hearing.

(c) Following the hearing, the administrative law judge will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the provisions of appeals and contests of the Department of the Interior (part 1850 of this title). Each decision by an administrative lay judge, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2(b) of the Act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

[35 FR 9737, June 13, 1970]

Subpart 3737—Use

§ 3737.1 Mining claim and millsite use.

(a) The Act in section 6 provides as follows:

> Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or millsite may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

[35 FR 9738, June 13, 1970]

Subpart 3738—Surface Protection Requirements

§ 3738.1 Bond or deposit required.

Should a limited order be issued under section 2(b)(2) of the Act, the locator is required to furnish a bond in a sum determined by the Administrative law judge. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

[35 FR 9738, June 13, 1970]

§ 3738.2 Restoration of surface conditions.

If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

[35 FR 9738, June 13, 1970]

PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3740—Public Law 585, Multiple Mineral Development: General

Sec.

3740.0-1 Purpose.

Subpart 3741—Claims, Locations and Patents

3741.1 Validation of certain mining claims.
3741.2 Preference mining locations.
3741.3 Additional evidence required with application for patent.
3741.4 Reservation to United States of Leasing Act minerals.

Sec.
3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.
3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

Subpart 3742—Procedures Under the Act

3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.
3742.2 Recordation of notice of application, offer, permit or lease.
3742.3 Publication of notice.
3742.3-1 Request for publication of notice of Leasing Act filing; supporting instruments.
3742.3-2 Contents of published notice.
3742.3-3 Publication.
3742.3-4 Proof of publication.
3742.3-5 Mailing of copies of published notice.
3742.3-6 Service of copies; failure to comply.
3742.4 Failure of mining claimant to file verified statement.

Subpart 3743—Hearings

3743.1 Hearing procedures.
3743.2 Hearing: Time and place.
3743.3 Stipulation between parties.
3743.4 Effect of decision affirming a mining claimant's rights.

Subpart 3744—Claimant's Rights

3744.1 Recording by mining claimant of request for copy of notice.
3744.2 Relinquishment by mining claimant of Leasing Act minerals.

Subpart 3745—Helium

3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

Subpart 3746—Fissionable Source Materials

3746.1 Mining locations for fissionable source materials.

Subpart 3740—Public Law 585, Multiple Mineral Development: General

§ 3740.0-1 Purpose.

The Act of August 13, 1954 (68 Stat. 708, 30 U.S.C. 521 subpart), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "Act" when used in this part, means the Act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act", when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the Act of August 13, 1954 (68 Stat 708).

[35 FR 9738, June 13, 1970]

Subpart 3741—Claims, Locations and Patents

SOURCE: 35 FR 9738, June 13, 1970, unless otherwise noted.

§ 3741.1 Validation of certain mining claims.

The Act in section 1(a) provides as follows:

> That (a) subject to the conditions and provisions of this Act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—
>
> (1) Included in a permit or lease issued under the mineral leasing laws; or
>
> (2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or
>
> (3) Known to be valuable for minerals subject to disposition under the mineral leasing laws, shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however,* That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the Act of August 12, 1953 (67 Stat. 539) [not later than December 10, 1953.] an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said Act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further,* That, in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of

this act, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 3741.2 Preference mining locations.

The Act in section 3(a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act, as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this Act or which may acquire validity under the provisions of this Act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7(c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 3741.3 Additional evidence required with application for patent.

All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this Act, or the Act of August 12, 1953 supra, in addition to matters required in Group 3800 of this chapter, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this Act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the Act.

§ 3741.4 Reservation to United States of Leasing Act minerals.

Section 4 of the Act provides that:

Every mining claim or millsite—

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this Act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to, such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.

Since enactment of the Act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws: This is inclusive of lands in petroleum reserves, except Naval petroleum reserves;

to the same extent in all respects as if such lands were not so included or covered or known.

§ 3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the Act or validated pursuant to the Act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the Act.

Subpart 3742—Procedures Under the Act

SOURCE: 35 FR 9739, June 13, 1970, unless otherwise noted.

§ 3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.

Section 7 of the Act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding regulations, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same.

§ 3742.2 Recordation of notice of application, offer, permit or lease.

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

§ 3742.3 Publication of notice.

§ 3742.3-1 Request for publication of notice of Leasing Act filing; supporting instruments.

(a) Having complied with the requirement of § 3742.2 the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the proper office. No Request for Publication, or publication, may include lands in more than one District.

(b) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engag in such working on the date of s examination, such affidavit or affi vits shall set forth the name and dress of each such person unless affiant shall have been unab through reasonable inquiry, to obta information as to the name and a dress of such person; in which even the affidavit or affidavits shall s forth fully the nature and the resul of such inquiry.

(3) The certificate of a title or ab stract company, or of a title abstrac tor, or of an attorney, based upon suc company's, abstractor's or attorney examination of the instruments affec ing the lands involved, of record in the public records of the county in which said lands are situated as shown b the indices of the public records in the county office of record for said county setting forth the name of any perso disclosed by said instruments to have an interest in said lands under any un patented mining claim located prior to enactment of the Act on August 1 1954, together with the address of such person if disclosed by such in struments of record.

(4) A nonrefundable $10 remittanc to cover service charge.

§ 3742.3-2 Contents of published notice.

The notice to be published as re quired by the preceding section, shal describe the lands covered by the ap plication, offer, permit or lease in the same manner as is required unde § 3742.2 Such published notice shal notify whomever it may concern, tha if any person claiming or assertin under, or by virtue of, any unpatente mining claim located prior to enact ment of the Act of August 13, 195 any right or interest in Leasing Ac minerals as to such lands or any par thereof, shall fail to file in the offic where such Request for Publicatio was filed (which office shall be spec fied in such notice), and within 15 days from the date of the first publica tion of such notice (which date shal be specified in such notice), a verifie statement which shall set forth, as to such unpatented mining claim:

(a) The date of location;

(b) The book and page of recordation of the notice or certificate of location;

(c) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(d) Whether such claimant is a locator or purchaser under such location; and

(e) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (1) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (2) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the Act, and (3) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 3742.3-3 Publication.

(a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Authorized officer, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Authorized officer, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semiweekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 3742.3-4 Proof of publication.

After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement[1] that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3742.3-5 Mailing of copies of published notice.

Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 3742.3-1.

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the Act (see § 3744.1);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 3742.3-1; and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

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[1] 18 U.S.C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 3742.3-6 Service of copies; failure to comply.

If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7(a) of the Act as to personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3742.4 Failure of mining claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 3742.3-6.

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the Act, and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

Subpart 3743—Hearings

SOURCE: 35 FR 9741, June 13, 1970, unl otherwise noted.

§ 3743.1 Hearing procedures.

The procedures with respect t notice of such hearing and the con duct thereof, and in respect to appeal shall follow the provisions of Appeal and Contests of the Department o the Interior and the Bureau of Land Management (part 1850 of this chapter) relating to contests or protests affecting public lands of the United States.

§ 3743.2 Hearing: Time and place.

If any verified statement shall be filed by a mining claimant then the authorized officer of the proper office or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 3743.3 Stipulation between parties.

If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3743.4 Effect of decision affirming a mining claimant's rights.

If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the Act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

Subpart 3744—Claimant's Rights

§ 3744.1 Recording by mining claimant of request for copy of notice.

Section 7(d) of the Act provides that:

> Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:
>
> (1) The date of location;
>
> (2) The book and page of the recordation of the notice or certificate of location; and
>
> (3) The section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.
>
> Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

[35 FR 9741, June 13, 1970]

§ 3744.2 Relinquishment by mining claimant of Leasing Act minerals.

Section 8 of the Act provides that:

> The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

[35 FR 9741, June 13, 1970]

Subpart 3745—Helium

§ 3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

(a) Section 9 of the Act provides that:

> Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the FEDERAL REGISTER: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the FEDERAL

REGISTER will confer any rights on the locator or applicant.

[35 FR 9741, June 13, 1970]

Subpart 3746—Fissionable Source Materials

§ 3746.1 Mining locations for fissionable source materials.

(a) In view of the amendment of section 5(b)(7) of the Atomic Energy Act of 1946 by section 10(c) of the Act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said Act of August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said Act of August 13, 1954, section 10(d) of the act provides:

> (d) Notwithstanding the provisions of the Atomic Energy Act, and particularly sec. 5(b)(7) thereof, prior to its amendment hereby, or the provisions of the Act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a fissionable source material.

[35 FR 9741, June 13, 1970, as amended at 41 FR 50690, Nov. 17, 1976]

Group 3800—Mining Claims Under the General Mining Laws

NOTE: The information collection requirements contained in parts 3800, 3810, 3820, 3830, 3860 and 3870 of Group 3800 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004-0025, 1004-0104, 1004-0110 and 1004-0114. The information is being collected to permit the authorized officer to review certain proposed mining activities to ensure that they provide adequate protection of the public lands and their resources. The infor will be used to make this determinati response is required to obtain a benefit.

(See 48 FR 40890, Sept. 12, 1983)

PART 3800—MINING CLAIMS UN THE GENERAL MINING LAWS

Subpart 3802—Exploration and Mining Wilderness Review Program

Sec.

3802.0-1 Purpose.
3802.0-2 Objectives.
3802.0-3 Authority.
3802.0-5 Definitions.
3802.0-6 Policy.
3802.0-7 Scope.
3802.1 Plan of operations.
3802.1-1 When required.
3802.1-2 When not required.
3802.1-3 Operations existing on Octo 21, 1976.
3802.1-4 Contents of plan of operations.
3802.1-5 Plan approval.
3802.1-6 Modification of plan.
3802.1-7 Existing operations.
3802.2 Bond requirements.
3802.3 Environmental protection.
3802.3-1 Environmental assessment.
3802.3-2 Requirements for environmenta protection.
3802.4 General provisions.
3802.4-1 Noncompliance.
3802.4-2 Access.
3802.4-3 Multiple-use conflicts.
3802.4-4 Fire prevention and control.
3802.4-5 Maintenance and public safety.
3802.4-6 Inspection.
3802.4-7 Notice of suspension of op ations.
3802.4-8 Cessation of operations.
3802.5 Appeals.
3802.6 Public availability of informatio

Subpart 3809—Surface Management

GENERAL

3809.0-1 Purpose.
3809.0-2 Objectives.
3809.0-3 Authority.
3809.0-5 Definitions.
3809.0-6 Policy.
3809.1 Operations.
3809.1-1 Reclamation.
3809.1-2 Casual use: Negligible distur ance.
3809.1-3 Notice: Disturbance of 5 acres less.
3809.1-4 Plan of operations: When re quired.
3809.1-5 Filing and contents of plan of op erations.

3809.1-6 Plan approval.
3809.1-7 Modification of plan.
3809.1-8 Existing operations.
3809.1-9 Bonding requirements.
3809.2 Prevention of unnecessary or undue degradation.
3809.2-1 Environmental assessment.
3809.2-2 Other requirements for environmental protection.
3809.3 General provisions.
3809.3-1 Applicability of State law.
3809.3-2 Noncompliance.
3809.3-3 Access.
3809.3-4 Fire prevention and control.
3809.3-5 Maintenance and public safety.
3809.3-6 Inspection.
3809.3-7 Periods of non-operation.
3809.4 Appeals.
3809.5 Public availability of information.
3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

AUTHORITY: 43 U.S.C. 1782, unless otherwise noted.

SOURCE: 45 FR 13974, Mar. 3, 1980, unless otherwise noted.

Subpart 3802—Exploration and Mining, Wilderness Review Program

§ 3802.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent impairment of the suitability of lands under wilderness review for inclusion in the wilderness system and to prevent unnecessary or undue degradation by activities authorized by the U.S. Mining Laws and provide for environmental protection of the public lands and resources.

§ 3802.0-2 Objectives.

The objectives of this subpart are to:

(a) Allow mining claim location, prospecting, and mining operations in lands under wilderness review pursuant to the U.S Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system unless otherwise permitted by law; and

(b) Assure management programs that reflect consistency between the U.S. Mining Laws, and other appropriate statutes.

§ 3802.0-3 Authority.

These regulations are issued under the authority of sections 302 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

§ 3802.0-5 Definitions.

As used in this subpart, the term:

(a) *Reclamation*, which shall be commenced, conducted and completed as soon after disturbance as feasible without undue physical interference with mining operations, means:

(1) Reshaping of the lands disturbed and affected by mining operations to the approximate original contour or to an appropriate contour considering the surrounding topography as determined by the authorized officer;

(2) Restoring such reshaped lands by replacement of topsoil; and

(3) Revegetating the lands by using species previously occurring in the area to provide a vegetative cover at least to the point where natural succession is occuring.

(b) *Environment* means surface and subsurface resources both tangible and intangible, including air, water, mineral, scenic, cultural, paleontological, vegetative, soil, wildlife, fish and wilderness values.

(c) *Wilderness Study Area* means a roadless area of 5,000 acres or more or roadless islands which have been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.

(d) *Impairment of suitability for inclusion in the Wilderness System* means taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System or have degraded wilderness values so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability for preservation as wilderness.

(e) *Mining claim* means any unpatented mining claim, millsite, or tunnel site authorized by the U.S. mining laws.

(f) *Mining operations* means all functions, work, facilities, and activities in connection with the prospecting, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of means of access to and across lands subject to these regulations, whether the operations take place on or off the claim.

(g) *Operator* means a person conducting or proposing to conduct mining operations.

(h) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(i) *Wilderness inventory* means an evaluation conducted under BLM wilderness inventory procedures which results in a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.

(j) *Manner and degree* means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular, claim or lease, and in some cases a change in the kind of activity if the impacts from the continuation and change of activity are not of a significantly different kind than the existing impacts. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity, even if impairing, may continue to be expanded in an area or progress to the next stage of development so long as the additional impacts are not significantly different from those caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

(k) *Valid existing right* means a valid discovery had been made on a mining claim on October 21, 1976, and continues to be valid at the time of exercise.

(l) *Undue and unnecessary degradation* means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.

(m) *Substantially unnoticeable* means something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change.

§ 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and management Act requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining operations occurring in the same manner and degree that were being conducted on October 21, 1976, may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands.

§ 3802.0-7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws, as they affect the resources and environment or wilderness suitability of lands under wilderness review.

(b) These regulations apply to means of access across public land for the purpose of conducting operations under the U.S. mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and reclamation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1–1 When required.

An approved plan of operations is required for operations within lands under wilderness review prior to commencing:

(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(b) Any mining operations which destroy trees 2 or more inches in diameter at the base;

(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;

(d) Any operations using motorized ehicles over other than *open use reas and trails* as defined in subpart 292 of this title, *off-road vehicles*, nless the use of a motorized vehicle n be covered by a temporory use rmit issued under subpart 8372 of is title;

(e) The construction or placing of y mobile, portable or fixed structure public land for more than 30 days;

f) On mining operations requiring e use of explosives; or

g) Any operation which may cause nges in a water course.

02.1–2 When not required.

plan of operations under this subt is not required for—

(a) Searching for and occasionally removing mineral samples or specimens;

(b) Operating motorized vehicles over *open use areas and trails* as defined in 43 CFR part 8340 so long as the vehicles conform to the operating regulations and vehicle standards contained in that subpart;

(c) Maintaining or making minor improvements of existing access routes, bridges, landing areas for aircraft, or other facilities for access where such improvements or maintenance shall not alter the alignment, width, gradient, size or character of such facilities; or

(d) Making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices, or drilling equipment which are transported without using mechanized earth moving equipment or tracked vehicles.

§ 3802.1–3 Operations existing on October 21, 1976.

A plan of operations shall not be required for operations that were being conducted on October 21, 1976, unless the operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. However, if the authorized officer determines that operations in the same manner and degree are causing undue or unnecessary degradation of lands and resources or adverse environmental effects, an approved plan containing protective measures may be required. Any changes planned in an existing operation that would result in operations exceeding the present manner and degree shall be delayed until the plan is processed under provisions of § 3802.1–5 of this title.

§ 3802.1–4 Contents of plan of operations.

(a) A plan of operations shall be filed in the District Office of the Bureau of Land Management in which the claim is located.

(b) No special form is required to file a plan of operations.

(c) The plan of operations shall include—

(1) The name and mailing address of both the person for whom the oper-

ation will be conducted, and the person who will be in charge of the operation and should be contacted concerning the reclamation or other aspects of the operation (any change in the mailing address shall be reported promptly to the authorized officer);

(2) A map, preferably a topographic map, or sketch showing present road, bridge or aircraft landing area locations, proposed road, bridge or aircraft landing area locations, and size of areas where surface resources will be disturbed;

(3) Information sufficient to describe either the entire operation proposed or reasonably foreseeable operations and how they would be conducted, including the nature and location of proposed structures and facilities,

(4) The type and condition of existing and proposed means of access or aircraft landing areas, the means of transportation used or to be used, and the estimated period during which the proposed activity will take place;

(5) If and when applicable, the serial number assigned to the mining claim, mill or tunnel site filed pursuant to subpart 3833 of this title.

§ 3802.1-5 Plan approval.

(a) The authorized officer shall promptly aknowledge the receipt of a plan of operations and within 30 days of receipt of the plan act on the plan of operations to determine its acceptability.

(b) The authorized officer shall review the plan of operations to determine if the operations are impairing the suitability of the area for preservation as wilderness. Pending approval of the plan of operations, mining operations may continue in a manner that minimizes environmental impacts as prescribed in § 3802.3 of this title. After completing the review of the plan of operations, the authorized officer shall give the operator written notice that:

(1) The plan is approved subject to measures that will prevent the impairment of the suitability of the area for preservation as wilderness as determined by the authorized officer;

(2) Plans covering operations on a claim with a valid existing right are approved subject to measures that will prevent undue and unnecessary degradation of the area; or

(3) The anticipated impacts of the mining operations are such that all or part of further operations will impair the suitability of the area for preservation as wilderness, the plan is disapproved and continuance of such operations is not allowed.

(c) Upon receipt of a plan of operations for mining activities commencing after the effective date of these regulations, the authorized officer may notify the operator, in writing that:

(1) In an area of lands under wilderness review where an inventory has not been completed, an operator may agree to operate under a plan of operations that includes terms and conditions that would be applicable in a wilderness study area. Without an agreement to this effect, no action may be taken on the plan until a wilderness inventory is completed;

(2) The area has been inventoried and a final decision has been issued and become effective that the area does not contain wilderness characteristics, and that the mining operations are no longer subject to these regulations; or

(3) The anticipated impacts are such that all or part of the proposed mining operations will impair the suitability of the area for preservation as wilderness, and therefore, the proposed mining operation cannot be allowed.

(d) In addition to paragraphs (a) through (c) of this section, the following general plan approval procedures may also apply. The authorized officer may notify the operator, in writing that:

(1) The plan of operations is unacceptable and the reasons therefore;

(2) Modification of the plan of operations is necessary to meet the requirements of these regulations;

(3) The plan of operations is being reviewed, but that more time, not to exceed an additional 60 days, is necessary to complete such review, setting forth the reasons why additional time is needed except in those instances where it is determined that an Environmental Impact Statement, compliance with section 106 of the National

Historic Preservation Act (NHPA) or section 7 of the Endangered Species Act is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards or other physical conditions or legal impediments, shall not be included when counting the 60 calendar day period; or

(4) The proposed operations do not require a plan of operations.

(e) If the authorized officer does not notify the operator of any action on the plan of operations within the 30-day period, or the 60-day extension, or notify the operator of the need for an Environmental Impact Statement or compliance with section 106 of NHPA or section 7 of the Endangered Species Act, operations under the plan may begin. The option to begin operations under this section does not constitute approval of a plan of operations. However, if the authorized officer at a later date finds that operations under the plan are impairing wilderness suitability, the authorized officer shall notify the operator that the operations are not in compliance with these regulations and what changes are needed, and shall require the operator to submit a modified plan of operations, within a time specified in the notice. If the operator is notified of the need for an Environmental Impact Statement, the plan of operations shall not be approved before 30 days after a final statement is prepared and iled with the Environmental Protection Agency. If the is operator notified f the need for compliance with section 106 of the NHPA or section 7 of he Endangered Species Act, the plan f operations shall not be approved ntil the compliance responsibilities of e Bureau of Land Management are tisfied.

(f) If cultural resource properties ted on or eligible for listing on the tional Register of Historic Places e within the area of operations, no erations which would affect those ources shall be approved until compance with section 106 of the National Historic Preservation Act is accomhed. The operator is not required do or to pay for an inventory. The onsibility and cost of the cultural urce mitigation, except as provided in § 3802.3-2(f) of this title, included in an approved plan of operation shall be the operator's.

(g) Pending final approval of the plan of operations, the authorized officer may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to prevent impairment of wilderness suitability and to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 3802.3 of this title.

§ 3802.1-6 Modification of plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth this proposed operation to the degree reasonably foreseeable at that time. Thereafter, the operator shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.

(b) At any time during operations under an approved plan of operations, the authorized officer or the operator may initiate a modification of the plan detailing any necessary changes that were unforeseen at the time of filing of the plan of operations. If the operator does not furnish a proposed modification within a time considered reasonable by the authorized officer, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the supporting facts and reasons for his recommendations. In acting upon such recommendation, except in the case of a modification under § 3802.1-5(e) of this title, the State Director shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations; (2) whether the disturbance is or may become of such significance as to require modification of the plan of operations in order to meet the requirement for environmental protection specified in § 3802.3-2 of this title, and (3) whether the disturbance can be minimized using reasonable means. Lacking such a determination by the State Director, an operator is not required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the State Director determines that the operations are causing impairment or unnecessary or undue degradation to surface resources. He shall advise the operator of those measures needed to avoid such damage and the operator shall immediately take all necessary steps to implement measures recommended by the State Director.

(c) A supplemental plan of operations or a modification of an approved plan of operations shall be approved by the authorized officer in the same manner as the initial plan of operations.

§ 3802.1-7 Existing operations.

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a plan of operations under § 3802.1-1 of this title, may continue operations but shall, within 60 days after the effective date of these regulations, submit a plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.

(b) Operations may continue according to the submitted plan of operations during its review unless the operator is notified otherwise by the authorized officer.

(c) Upon approval of a plan of operations, mining operations shall be conducted in accordance with the approved plan.

§ 3802.2 Bond requirements.

(a) Any operator who conducts mining operations under an approved plan of operations shall, if required to do so by the authorized officer, furnish a bond in an amount determined by the authorized officer. The authorized officer may determine not to require a bond where mining operations would cause nominal environmental damage, or the operator has an excellent past record for reclamation. In determining the amount of the bond, the authorized officer shall consider the estimated cost of stabilizing and reclaiming all areas disturbed by the operations consistent with § 3802.3-2(h) of this title.

(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a face and market value at the time of deposit of not less than the required dollar amount of the bond.

(c) In place of the individual bond on each separate operation, a blanket bond covering hardrock mining operations may be furnished, at the option of the operator, if the terms and conditions as determined by the authorized officer are sufficient to comply with these regulations.

(d) In the event that an approved plan of operations is modified in accordance with § 3802.1-5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, shall require that the amount of bond be adjusted to conform to the plan of operations, as modified.

(e) When a mining claim is patented, except for the California Desert Conservation Area, the authorized officer shall release the operator from that portion of the performance bond and plan of operations which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond and plan of operations (covering approved means of access outside the boundaries of the mining claim) when the operator has either completed reclamation in accordance with paragraph (f) of this section or those requirements are waived by the authorized officer.

(f) When all or any portion of the reclamation has been completed in accordance with paragraph (h) of § 3802.3-2 of this title, the operator shall notify the authorized officer who shall promptly make a joint inspection with the operator. The authorized officer shall then notify the operator whether the performance under the plan of operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond with respect to the remaining reclamation.

§ 3802.3 Environmental protection.

§ 3802.3-1 Environmental assessment.

(a) When a plan of operations or significant modification is filed, the authorized officer shall make an environmental assessment to identify the impacts of the proposed mining operations upon the environment and to determine whether the proposed activity will impair the suitability of the area for preservation as wilderness or cause unnecessary and undue degradation and whether an environmental impact statement is required.

(b) Following completion of the environmental assessment or the environmental impact statement, the authorized officer shall develop measures deemed necessary for inclusion in the plan of operations that will prevent impairment of wilderness suitability and undue or unnecessary degradation of land and resources.

(c) If as a result of the environment assessment, the authorized officer determines that there is substantial public interest in the proposed mining operations, the operator may be notified that an additional period of time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in § 3802.1-4 of this title except as provided for cases requiring an environmental impact statement, a cultural resource inventory or section 7 of the Endangered Species Act.

§ 3802.3-2 Requirements for environmental protection.

(a) *Air quality.* The operator shall comply with applicable Federal and State air quality standards, including he requirements of the Clean Air Act 42 U.S.C. 1857 *et seq.*).

(b) *Water quality.* The operator hall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 *et seq.*).

(c) *Solid wastes.* The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed or treated to minimize, so far as is practicable, its impact on the environment and the surface resources. All tailings, waste rock, trash, deleterious materials of substances and other waste produced by operations shall be deployed, arranged, disposed or treated to minimize adverse impact upon the environment, surface and subsurface resources.

(d) *Visual resources.* The operator shall, to the extent practicable, harmonize operations with the visual resources, identified by the authorized officer, through such measures as the design, location of operating facilities and improvements to blend with the landscape.

(e) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to minimize or prevent adverse impact upon plants, fish, and wildlife, including threatened or endangered species, and their habitat which may be affected by the operations.

(f) *Cultural and paleontological resources.* (1) The operator shall not knowingly disturb, alter, injure, destroy or take any scientifically important paleontological remains or any historical, archaeological, or cultural district, site, structure, building or object.

(2) The operator shall immediately bring to the attention of the authorized officer any such cultural and/or paleontological resources that might be altered or destroyed by his operation, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his attention, and determine within 10 working days what action shall be taken with respect to such discoveries.

(3) The responsibility and the cost of investigations and salvage of such

values discovered during approved operations shall be the Federal Goverment's.

(g) *Access routes.* No new access routes that would cause more than temporary impact and therefore would impair wilderness suitability shall be constructed in a wilderness study area. Temporary access routes that are constructed by the operator shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic; bridges and culverts shall be removed; cross drains, dips, or water bars shall be constructed, and the road surface shall be shaped to as near a natural contour as practicable, be stabilized and revegetated as required in the plan of operations.

(h) *Reclamation.* (1) The operator shall perform reclamation of those lands disturbed or affected by the mining operation conducted by the operator under an approved plan of operations containing reclamation measures stipulated by the authorized officer as contemporaneously as feasible with operations. The disturbance or effect on mined land shall not include that caused by separate operations in areas abandoned before the effective date of these regulations.

(2) An operator may propose and submit with his plan of operations measures for reclamation of the affected area.

(i) *Protection of survey monuments.* The operator shall, to the extent practicable and consistent with the operation, protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against destruction, obliteration, or damage from the approved operations. If, in the course of operations, any monuments, corners or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe in writing the requirement for the restoration or reestablishment of monuments, corners, bearing trees, and line trees.

§ 3802.4 General provisions.

§ 3802.4–1 Noncompliance.

(a) An operator who conducts mining operations undertaken either without an approved plan of operations or without taking actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations and that noncompliance is causing impairment of wilderness suitability or unnecessary and undue degradation of the resources of the lands involved, the authorized officer shall serve a notice of noncompliance upon the operator by delivery in person to the operator or the operator's authorized agent, or by certified mail addressed to the operator's last known address.

(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations of the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which shall be taken to correct the noncompliance and the time limits, not to exceed 30 days, within which corrective action shall be taken.

§ 3802.4–2 Access.

(a) An operator is entitled to non-exclusive access to his mining operations consistent with provisions of the United States mining laws and Departmental regulations.

(b) In approving access as part of a plan of operations, the authorized officer shall specify the location of the access route, the design, construction, operation and maintenance standards, means of transportation, and other conditions necessary to prevent impairment of wilderness suitability, protect the environment, the public health or safety, Federal property and economic interests, and the interests of other lawful users of adjacent lands or lands traversed by the access route. The authorized officer may also require the operator to utilize existing access routes in order to minimize the number of separate rights-of-way, and, if practicable, to construct access routes within a designated transportation and utility corridor. When commercial hauling is involved and the use of an existing access route is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3802.4-3 Multiple-use conflicts.

In the event that uses under any lease, license, permit, or other authorization pursuant to the provisions of any other law, shall conflict, interfere with, or endanger operations in approved plans or otherwise authorized by these regulations, the conflicts shall be reconciled, as much as practicable, by the authorized officer.

§ 3802.4-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

§ 3802.4-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

§ 3802.4-6 Inspection.

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved plan of operations, and the operator shall permit access to the authorized officer for this purpose.

§ 3802.4-7 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days after such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date.

(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during nonoperating periods.

(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

§ 3802.4-8 Cessation of operations.

The operator shall, within 1 year following cessation of operations, remove all structures, equipment, and other facilities and reclaim the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

§ 3802.5 Appeals.

(a) Any party adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

§ 3802.6 Public availability of information.

(a) Except as provided herein, all information and data, including plans of operation, submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act (F.O.I.A.).

(b) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information and so determined by the authorized officer will not be available for public examination.

(c) The determination concerning specific information which may be withheld from public examination will be made in accordance with the rules in 43 CFR part 2.

Subpart 3809—Surface Management

AUTHORITY: Secs. 2319 (30 U.S.C. 22); 2478 (43 U.S.C. 1201) of the Revised Statutes and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

SOURCE: 45 FR 78909, Nov. 26, 1980, unless otherwise noted.

NOTE: The information collection requirements contained in this subpart have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0104. This information is needed to permit the authorized officer to determine if a plan of operation is needed to protect the public lands and their resources and to determine if the plan of operations, if one is required, is adequate. The obligation to respond is required to obtain a benefit.

(See 48 FR 8816, Mar. 2, 1983.)

GENERAL

§ 3809.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of Federal lands which may result from operations authorized by the mining laws.

§ 3809.0-2 Objectives.

The objectives of this regulation are to:

(a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the Federal lands;

(b) Provide for reclamation of disturbed areas; and

(c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

§ 3809.0-3 Authority.

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on Federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal and Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the Federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

§ 3809.0-5 Definitions.

As used in this subpart, the term:

(a) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) *Casual Use* means activities ordinarily resulting in only negligible disturbance of the Federal lands and resources. For example, activities are generally considered *casual use* if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed to off-road vehicles as defined in subpart 8340 of this title.

(c) *Federal lands* means lands subject to the mining laws including, but not limited to, the certain *public lands* defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National Forest System, and the National Wildlife Refuge System, nor does it include acquired lands, Stock-raising Homestead lands or lands where only the mineral interest is reserved to the United States or lands under Wilderness Review and administered by the Bureau of Land Management (these lands are subject to the 43 CFR part 3802 regulations).

(d) *Mining claim* means any unpatented mining claim, millsite, or tunnel site located under the mining laws and those patented mining claims and millsites located in the California Desert Conservation Area which have been patented subsequent to the enactment of the Federal Land Policy and Management Act of October 21, 1976.

(e) *Mining laws* means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); and all laws supplementing and amending those laws, including among others the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); and the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(f) *Operations* means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across Federal lands subject to these regulations.

(g) *Operator* means a person conducting or proposing to conduct operations.

(h) *Person* means any citizen of the United States or person who has declared the intention to become such and includes any individual, partnership, corporation, association, or other legal entity.

(i) *Project area* means a single tract of land upon which an operator is, or will be, conducting operations. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be conducted, as well as Federal lands on which an operator is exploring or prospecting prior to locating a mining claim.

(j) *Reclamation* means taking such reasonable measures as will prevent unnecessary or undue degradation of the Federal lands, including reshaping land disturbed by operations to an appropriate contour and, where necessary, revegetating disturbed areas so as to provide a diverse vegetative cover. Reclamation may not be required where the retention of a stable highwall or other mine workings is needed to preserve evidence of mineralization.

(k) *Unnecessary or undue degradation* means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation. Where specific statutory authority requires the attainment of a stated level of protection or reclamation, such as in the California Desert Conservation Area, Wild and Scenic Rivers, areas designated as part of the National Wilderness System administered by the Bureau of Land Management and other such areas, that level of protection shall be met.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.0-6 Policy.

Consistent with section 2 of the Mining and Mineral Policy Act of 1970 and section 102(a) (7), (8), and (12) of the Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of Federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) Federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the Federal lands and to provide for reasonable reclamation.

§ 3809.1 Operations.

§ 3809.1-1 Reclamation.

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

§ 3809.1-2 Casual use: Negligible disturbance.

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of Federal lands will not occur.

§ 3809.1-3 Notice: Disturbance of 5 acres or less.

(a) All operators on project areas whose operations, including access across Federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice covering substantially the same ground, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under paragraph (c)(3) of this section when the construction of access routes are involved. Notices properly filed under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be

reported promptly to the authorized officer;

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable, to minimize cut and fill. When the construction of access routes involves slopes which require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in § 3809.1-3(d) of this title and that reasonable measures will be taken to prevent unnecessary or undue degradation of the Federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill.

(2) All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and in accordance with applicable Federal and State Laws.

(3) At the earliest feasible time, the perator shall reclaim the area disurbed, except to the extent necessary o preserve evidence of mineralization, y taking reasonable measures to preent or control on-site and off-site amage of the Federal lands.

(4) Reclamation shall include, but shall not be limited to:

(i) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(ii) Measures to control erosion, landslides, and water runoff;

(iii) Measures to isolate, remove, or control toxic materials;

(iv) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) Rehabilitation of fisheries and wildlife habitat.

(5) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to prevent undue or unnecessary degradation or to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3-2 of this title.

[45 FR 78909, Nov. 26, 1980; FR 82934, Dec. 17, 1980, as amended at 8 FR 8816, Mar. 2, 1983]

§ 3809.1-4 Plan of operations: When required.

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1-3 of this title.

(b) Any operation, except casual use, in the following designated areas:

(1) Lands in the California Desert Conservation Area designated as *controlled* or *limited* use areas by the California Desert Conservation Area plan;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system,

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas designated as *closed* to off-road vehicle use as defined in subpart 8340 of this title.

(c) Plans properly filed and approved under this section constitute authorization under part 8340 of this title (Off-Road Vehicles).

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.1-5 Filing and contents of plan of operations.

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the Federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3809.1-3(d) of this title. Where an operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-6 Plan approval.

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has

complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1-9 of this title as it relates to bonding.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-7 Modification of plan.

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually 30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the Federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

§ 3809.1-8 Existing operations.

(a) Persons conducting operations on the effective date of these regulations, who would be required to submit a notice under § 3809.1-3 or a plan of operations under § 3809.1-4 of this title may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1-3 of this title for operations where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1-4 of this title. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the Federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-9 Bonding requirements.

(a) No bond shall be required for operations that constitute casual use (§ 3809.1-2) or that are conducted under a notice (§ 3809.1-3 of this title).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1-5 of this title may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the aut ized officer shall consider the estir ed cost of reasonable stabilization reclamation of areas disturbed. In of the submission of a separate bo the authorized officer may accept dence of an existing bond pursuant State law or regulations for the sa area covered by the plan of operatio upon a determination that the cov age would be equivalent to that p vided in this section.

(c) In lieu of a bond, the operat may deposit and maintain in a Feder depository account of the Unite States Treasury, as directed by the au thorized officer, cash in an amoun equal to the required dollar amount o the bond or negotiable securities o the United States having a marke value at the time of deposit of not les than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1-7 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (see § 3809.6 of this title).

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.2 Prevention of unnecessary or undue degradation.

§ 3809.2-1 Environmental assessment.

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the environmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is *substantial public interest* in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan in § 3809.1-6 of this title, is required to consider public comments on the environmental assessment.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.2-2 Other requirements for environmental protection.

All operations, including casual use and operations under either a notice (§ 3809.1-3) or a plan of operations (§ 3809.1-4 of this title), shall be conducted to prevent unnecessary or undue degradation of the Federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *Air quality.* All operators shall comply with applicable Federal and State air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(c) *Solid wastes.* All operators shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(d) *Fisheries, wildlife and plant habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(e) *Cultural and paleontological resources.* (1) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on Federal lands.

(2) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on Federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days after notification to the authorized officer of such discovery.

(3) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(f) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.3 General provisions.

§ 3809.3-1 Applicability of State law.

(a) Nothing in this subpart shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on Federal lands under the mining laws.

(b) After the publication date of these regulations the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locat under the mining laws.

(c) The Director may consult w appropriate representatives of e State to formulate and enter i agreements to provide for a joint F eral-State program for administrati and enforcement. The purpose of su agreements is to prevent unnecessa or undue degradation of the Feder lands from operations which are co ducted under the mining laws, to pr vent unnecessary administrative dela and to avoid duplication of administr tion and enforcement of laws. Suc agreements may, whenever possible provide for State administration an enforcement of such programs.

[45 FR 78909, Nov. 26, 1980; 45 FR 8293 Dec. 17, 1980]

§ 3809.3-2 Noncompliance.

(a) Failure of an operator to file a notice under § 3809.1-3 of this title or a plan of operations under § 3809.1-4 of this title will subject the operator, at the discretion of the authorized officer, to being served a notice of noncompliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1-3 of this title is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1-3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of noncompliance shall be served in the

same manner as described in § 3809.3-2(b)(1) of this section.

(c) All operators who conduct operations under a notice pursuant to § 3809.1-3 and a plan pursuant to § 3809.1-4 of this title on Federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) Failure of an operator to take necessary actions on a notice of noncompliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1-5 of this title, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1-3 of this title.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.3-3 Access.

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3809.3-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

§ 3809.3-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.

§ 3809.3-6 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§ 3809.3-7 Periods of non-operation.

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

§ 3809.4 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of receipt of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

[45 FR 78909, Nov. 26, 1980, as amended at 48 FR 8816, Mar. 2, 1983]

§ 3809.5 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of Freedom of Information Act.

(b) The determination concern specific information which may withheld from public examinat shall be made in accordance with rules in 43 CFR part 2.

§ 3809.6 Special provisions relating mining claims patented within boundaries of the California Des Conservation Area.

In accordance with section 601(f) the Federal Land Policy and Manag ment Act of October 21, 1976, all pa ents issued on mining claims locate within the boundaries of the Califo nia Desert Conservation Area afte the enactment of the Federal Lan Policy and Management Act shall b subject to the regulations in this part including the continuation of a plan o operations and of bonding with respect to the land covered by the patent.

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

Subpart 3811—Lands Subject to Location and Purchase

Sec.

3811.1 Lands: General.
3811.2 Lands: Specific.
3811.2-1 States where locations may be made.
3811.2-2 Lands in national parks and national monuments.
3811.2-3 Lands in Indian reservations.
3811.2-4 Lands in national forests.
3811.2-5 O and C and Coos Bay Wagon Road lands.
3811.2-6 Lands in powersite withdrawals.
3811.2-7 Fissionable source material on coal lands.
3811.2-8 Lands under Alaska Public Sale Act.
3811.2-9 Lands under Color of Title Act.

Subpart 3812—Minerals Under the Mining Laws

3812.1 Minerals subject to location.

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

3813.0-3 Authority.
3813.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location entry and patenting.

Sec.
3813.2 Minerals subject to disposition.
3813.3 Provision of the mineral patent.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.
3814.2 Mineral reservation in patent; conditions to be noted on mineral applications.

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

3815.1 Mineral locations.
3815.2 Prospecting and mining.
3815.3 Surface limitation.
3815.4 Protection of stock.
3815.5 Access to stock watering places.
3815.6 Locations subject to mining laws.
3815.7 Mining claims subject to stock driveway withdrawals.
3815.8 Notation required in application for patent; conditions required in patent.

Subpart 3816—Mineral Locations in Reclamation Withdrawals

3816.1 Mineral locations.
3816.2 Application to open lands to location.
3816.3 Recommendations of Bureau of Reclamation to open lands.
3816.4 Recommendations as to reservations and contract form.

Subpart 3811—Lands Subject to Location and Purchase

Source: 35 FR 9742, June 13, 1970, unless otherwise noted.

§ 3811.1 Lands: General.

Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase. The Act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves in the public land states, subject to location and entry under the general mining laws in the usual manner. Lands entered or patented under the stockraising homestead law (title to minerals and the use of the surface necessary for mining purposes can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably are open to location.

§ 3811.2 Lands: Specific.

§ 3811.2-1 States where locations may be made.

(a) Mining locations may be made in the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(b) The laws of the United States relating to mining claims were extended to Alaska by section 8 of the Act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the Act of June 6, 1900 (31 Stat. 327, 329; 48 U.S.C. 119, 120, 381-383) again, in terms, extended the mining laws of the United States and all right incident thereto, to the State, with certain further provisions with respect to the acquisition of claims thereunder.

(c) The law in respect to placer claims in Alaska was modified and amended by the Act of August 1, 1912 (37 Stat. 242) and section 4 of that Act was amended by the Act of March 3, 1925 (43 Stat. 1118).

(d) By the Act of May 4, 1934 (43 Stat. 663; 48 U.S.C. 381a) the Acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the State.

§ 3811.2-2 Lands in national parks and national monuments.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law.

(a) The mining laws were extended to the Death Valley National Monument, Calif., by the Act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447). The Act provides that surface use of locations, entries, or patents is subject to general regulations prescribed by the

Secretary of the Interior. The regulations governing surface use in Death Valley National Monument are in 36 CFR 7.26.

(b) Mining locations may be made on lands in the Mount McKinley National Park, under the provisions of the Act of February 26, 1917 (39 Stat. 938; 16 U.S.C. 347-354) which expressly provides that the United States mining laws shall be applicable to mineral lands in that area. See § 3826.1.

(c) Regulations relative to mining in the Glacier Bay National Monument are contained in § 3826.4 of this chapter.

(d) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by § 3826.2 of this chapter.

(e) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to § 3826.5 of this chapter.

[35 FR 9743, June 13, 1970, as amended by Circ. 2275, 35 FR 12723, Aug. 11, 1970]

§ 3811.2-3 Lands in Indian reservations.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation from June 18, 1934 to May 27, 1955. See subpart 3825 of this chapter.

§ 3811.2-4 Lands in national forests.

For mining claims in national forests, see § 3811.1.

§ 3811.2-5 O and C and Coos Bay Wagon Road lands.

Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, located in Oregon, are subject to mining locations in accordance with provisions of subpart 3821 of this chapter.

§ 3811.2-6 Lands in powersite withdrawals.

Mining claims may be located on power site withdrawals subject to the provisions of part 3730 of this chapter.

§ 3811.2-7 Fissionable source material on coal lands.

Mining claims for fissionable source materials may be located on lands known to be valuable for coal under certain conditions. See part 3720 this chapter.

§ 3811.2-8 Lands under Alaska Pub Sale Act.

(a) Lands segregated for classific tion or sold under the Alaska Publ Sale Act of August 30, 1949 (63 Sta 679; 48 U.S.C. 364a-364e), are subje to mineral appropriation under th provision of section 3 of that Act fo the development of the reserved min erals under applicable laws, includin the United States mining laws, an subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. See subparts 2770 and 3922 of this chapter.

(b) [Reserved]

§ 3811.2-9 Lands under Color of Title Act.

Lands patented under the Color of Title Act (43 U.S.C. 1068), by exchange under the Taylor Grazing Act (43 U.S.C. 415g) and by Forest Exchanges (16 U.S.C. 485) with mineral reservation to the United States, are subject to appropriation under the mining or mineral leasing laws for the reserved materials. See Group 2200 and subpart 2540 of this chapter. Minerals in acquired lands of the United States are not subject to mining location but the minerals therein may be acquired in accordance with the regulations contained in part 3500.

Subpart 3812—Minerals Under the Mining Laws

§ 3812.1 Minerals subject to location.

Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, the deposits of sulphur in Louisiana and New Mexico belonging to the United States can be acquired under the mineral leasing laws (see § 3100.0-3(a)(1)), and are not subject to location and purchase under the United States mining laws. The so-called "common variety" mineral materials and petrified wood on the public lands may be acquired under the Materials Act, as amended (see part 3600).

[35 FR 9743, June 13, 1970]

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

SOURCE: 35 FR 9743, June 13, 1970, unless otherwise noted.

§ 3813.0-3 Authority.

The Act of July 20, 1956 (70 Stat. 592), which amended the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), was enacted to permit the disposal of certain reserved mineral deposits under the mining laws of the United States.

§ 3813.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.

The Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), as amended by the act of July 20, 1956 (70 Stat. 592), provides in part as follows:

> * * * such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however,* That all mineral deposits heretofore or hereafter reserved to the United States under this Act which are subject, at the time of application for patent to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages of the crops and improvements on such lands by reason of such prospecting, the measure of any such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removel of the minerals therefrom; and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages:

§ 3813.2 Minerals subject to disposition.

The Act of July 20, 1956, applies only to any mineral deposit discovered and located under the U.S. mining laws prior to February 25, 1920, and reserved to the United States under the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), and which, at the time of application for mineral patent, is subject to valid and subsisting rights under the said mining laws. Only that mineral deposit together with the right to use the surface to prospect for, mine, and remove the said deposit shall, on or after July 20, 1956, be subject to disposal to the holders of such valid and subsisting rights by patent under the mining laws in force at the time of such disposal. "Oil" reserved under the Act of 1914 has been held to include oil shale. See 52 L.D. 329.

§ 3813.3 Provisions of the mineral patent.

(a) Each patent issued under the Act of July 20, 1956, shall specifically name the discovered mineral deposit which had been reserved to the United States under the Act of July 17, 1914, and shall recite that, in accordance with the reservation in the land patent, the mineral patentee and its successors (or his heirs and assigns, if a person) shall have the right to prospect for, mine and remove the mineral deposit for which the patent is issued.

(b) If, when it is determined that mineral deposit is subject to patenting under the mining laws pursuant to the Act of July 20, 1956, there is a subsisting mineral lease or permit covering such deposit, the mineral patent shall be issued subject to the mineral lease or permit for so long as rights under the lease or permit shall exist, the patentee being substituted for the United States as lessor or permittor and the patentee being entitled to all revenues derived subsequent to the issuance of patent from any such lease or permit.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

§ 3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

(a) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the Act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting. Under the Act of June 21, 1949 (30 U.S.C. 54), a mineral entryman on a stock raising or other homestead entry or patent is also held liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals except that vested rights existing prior to June 21, 1949, are not impaired.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal
or other mineral deposits in a
land or the right to mine and
the same, may reenter and occ
much of the surface thereof as
required for all purposes reas
incident to the mining or rem
the coal, or other minerals, first
securing the written consent or
of the homestead entryman or p
ee; or, second, upon payment
damages to crops or other tangib
provements to the owner th
under agreement; or, third, in li
either of the foregoing provi
upon the execution of a good an
ficient bond or undertaking to
United States for the use and be
of the entryman or owner of the
to secure payment of such damag
the crops or tangible improvemen
the entryman or owner as may be
termined and fixed in an ac
brought upon the bond or underta
in a court of competent jurisdic
against the principal and sure
thereon. This bond on Form 3814 m
be executed by the person who has
quired from the United States the c
or other mineral deposits reserved,
directed in said section 9, as princip
with two competent individual su
ties, or a bonding company which
complied with the requirements of
Act of August 13, 1894 (28 Stat. 279
U.S.C. 6-13), as amended by the Act
March 23, 1910 (36 Stat. 241; 6 U.S.
8, 9), and must be in the sum of n
less than $1,000. Qualified corpora
sureties are preferred and may be a
cepted as sole surety. Except in th
case of a bond given by a qualified co
porate surety there must be file
therewith affidavits of justification b
the sureties and a certificate by
judge or clerk of a court of record,
United States district attorney,
United States commissioner, or
United States postmaster as to the
identity, signatures, and financial com
petency of the sureties. Said bond
with accompanying papers, must be
filed with the authorized officer of the
proper office, and there must also be
filed with such bond evidence of service of a copy of the bond upon the
homestead entryman or owner of the
land.

(d) If at the expiration of 30 days
after the receipt of the aforesaid copy

of the bond by the entryman or owner of the land, no objections are made by such entryman or owner of the land and filed with the authorized officer against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said authorized officer, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the authorized officer, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the authorized officer be not timely filed by the person proffering the bond, the authorized officer will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the authorized officer adverse to the contentions of said homestead entryman or owners of the lands, said authorized officer may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the Act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

[35 FR 9743, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

§ 3814.2 Mineral reservation in patent; conditions to be noted on mineral applications.

(a) There will be incorporated in patents issued on homestead entries under this Act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the Act of December 29, 1916 (39 Stat. 862).

(b) Mineral applications for the reserved deposits disposable under the Act must bear on the face of the same, before being signed by the declarant or applicant and presented to the authorized officer the following notation:

> Patents shall contain appropriate notations declaring same subject to the provisions of the Act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said Act.

[35 FR 9743, June 13, 1970]

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

Source: 35 FR 9744, June 13, 1970, unless otherwise noted.

§ 3815.1 Mineral locations.

Under authority of the provisions of the Act of January 29, 1929 (45 Stat. 1144; 43 U.S.C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals in lands within stock driveway withdrawals made before or after May 4, 1929.

§ 3815.2 Prospecting and mining.

All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

§ 3815.3 Surface limitation.

While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

§ 3815.4 Protection of stock.

All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

§ 3815.5 Access to stock watering places.

No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

§ 3815.6 Locations subject to mining laws.

Prospecting for minerals and the location of mining claims on lands in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

§ 3815.7 Mining claims subject to stock driveway withdrawals.

Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and regulations in this section.

§ 3815.8 Notation required in applica for patent; conditions required patent.

(a) Every application for patent any minerals located subject to t Act must bear on its face, before bei executed by the applicant and prese ed for filing, the following notation:

> Subject to the provisions of section 10 the Act of December 29, 1916 (39 Stat. 86 as amended by the Act of January 29, 19 (45 Stat. 1144).

Like notation will be made by th manager on the final certificat issued on such a mineral application.

(b) Patents issued on such applica tions will contain the added condition

> That this patent is issued subject to th provisions of the Act of December 29, 191 (39 Stat. 862), as amended by the Act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, occupancy and use of the land as permitted to an entryma under said Act.

Subpart 3816—Mineral Locations in Reclamation Withdrawals

SOURCE: 35 FR 9744, June 13, 1970, unles otherwise noted.

§ 3816.1 Mineral locations.

The Act of April 23, 1932 (47 Stat. 136; 43 U.S.C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416).

§ 3816.2 Application to open lands to location.

Application to open lands to location under the Act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the proper office, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits. Each application shall be accompanied by a $10 nonrefundable service charge.

§ 3816.3 Recommendations of Bureau of Reclamation to open lands.

When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal.

§ 3816.4 Recommendations as to reservations and contract form.

If in the opinion of the Bureau of Reclamation the lands may be opened under the Act without prejudice to the rights of the United States, the report will recommend the reservation of such ways, rights and easements considered necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which may be necessary for the protection of the irrigation interests.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3821—O and C Lands

Sec.
3821.1 General provisions.
3821.2 Requirements for filing notices of locations of claims; descriptions.
3821.3 Requirement for filing statements of assessment work.
3821.4 Restriction on use of timber; application for such use.
3821.5 Application for final certificates and patents.

Sec.

Subpart 3822—Lands Patented Under the Alaska Public Sale Act

3822.1 Subject to mining location.
3822.2 Compensation to surface rights holder.

Subpart 3823—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

3823.0-1 Purpose.
3823.0-5 Definition.
3823.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.
3823.2 Mineral locations within National Forest Wilderness.
3823.3 Mineral patents within National Forest Wilderness.
3823.4 Withdrawal from operation of the mining laws.

Subpart 3824—City of Prescott, Arizona, Watershed

3824.1 Mining locations.

Subpart 3825—Papago Indian Reservation, Arizona

3825.0-3 Authority.
3825.1 Mining locations in Papago Indian Reservation in Arizona.

Subpart 3826—National Park Service Areas

3826.1 Mount McKinley National Park, Alaska.
3826.1-1 Registration of prospectors and miners.
3826.1-2 Surface use of mineral land locations.
3826.2 Olympic National Park.
3826.2-1 Mining locations during 5-year period.
3826.2-2 Cutting of timber.
3826.2-3 Construction of trails and roads.
3826.2-4 Occupation and use of surface.
3826.2-5 Termination of right to use of surface of mining claims.
3826.2-6 Title to minerals only.
3826.3 Mining locations in Death Valley National Monument, California.
3826.3-1 Mining.
3826.3-2 Use of water.
3826.3-3 Permits.
3826.3-4 Filing of copies of mining locations.
3826.4 Glacier Bay National Monument, Alaska.
3826.4-1 Mining locations.
3826.5 Organ Pipe Cactus National Monument, Arizona.
3826.5-1 Mining locations.

Sec.
3826.5-2 Occupation and use of surface.
3826.5-3 Termination of right to use of surface of mining claims.
3826.5-4 Title to minerals only.
3826.5-5 Destroying vegetation prohibited.
3826.5-6 Construction of trails and roads.
3826.5-7 Lands containing certain features not subject to location.

Subpart 3827—King Range National Conservation Area

3827.0-1 Purpose.
3827.0-3 Authority.
3827.0-5 Definitions.
3827.0-7 Scope.
3827.1 Plan of operation.
3827.1-1 Approval; access; inspection.
3827.2 Requirements for environmental protection.
3827.3 Performance bonds.
3827.4 Use of mining claims restricted surface resources.
3827.5 Noncompliance.
3827.6 Trespass.

Subpart 3821—O and C Lands

SOURCE: 35 FR 9745, June 13, 1970, unless otherwise noted.

§ 3821.1 General provisions.

(a) The Act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The Act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937 to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

(a) Where prior to April 8, 1948, a mining claim has been located upon O. and C. lands, the owner thereof must
file for record, not later than Oc
5, 1948, in the proper office, a co
the notice of location of the c
With respect to all mining claim
cated on O. and C. lands on or
April 8, 1948, the owner thereof
file for record, within 60 days of
date of such mining location, in
proper office, a copy of the notic
location of the claim.

(b) If the location affects surve
lands and the copy of location no
does not describe those legal subd
sions, section, township and ra
partly or wholly covered by
mining claim, the copy must be acco
panied by a statement of the owner
the claim describing the legal subdi
sions affected.

(c) If the location affects unsurvey
lands and the copy of location noti
does not show the land describe
therein connected by course and di
tance to the nearest corner of th
public land surveys and does not giv
the probable legal subdivisions affect
ed if the lands were surveyed, the cop
must be accompanied by a statemen
of the owner of the claim giving tha
information or satisfactory reasons fo
not doing so.

(d) The name and address of each
owner of the claim should be fur
nished with the other data required by
this section.

§ 3821.3 Requirement for filing statement of assessment work.

The owner of any unpatented
mining claim located upon O. and C.
lands must also file for record in the
proper office in the district in which
the claim is situated, within 60 days
after the expiration of any annual as-
sessment year, a statement as to the
assessment work done or improve-
ments made during the previous as-
sessment year, or, as to compliance in
lieu thereof, with any applicable relief
act.

§ 3821.4 Restriction on use of timber; application for such use.

The owner of any unpatented
mining claim located upon O. and C.
lands on or after August 28, 1937, shall
not acquire title, possessory or other-
wise, to the timber, now or hereafter

growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise disposed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 3821.5 Applications for final certificates and patents.

Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the Act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the Act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the Act.

Subpart 3822—Lands Patented Under the Alaska Public Sale Act

§ 3822.1 Subject to mining location.

Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U.S.C. 364a–364e) are subject to mining location, under the provision of section 3 of that Act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Group 3800 and to the additional conditions and requirements in § 2771.6-2 of this chapter.

[35 FR 9746, June 13, 1970]

§ 3822.2 Compensation to surface rights holder.

Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the Act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by an authorized officer, as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

[35 FR 9746, June 13, 1970]

Subpart 3823—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

SOURCE: 35 FR 9746, June 13, 1970, unless otherwise noted.

§ 3823.0-3 Purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral locations and mineral patents within National Forest Wilderness.

§ 3823.0-5 Definition.

As used in this subpart the term *National Forest Wilderness* means an area or part of an area of National Forest lands designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§ 3823.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National

Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with the location of valuable mineral deposits which may be discovered through such activity and which may be open to such location, attention is directed to the fact that no claim may be located after midnight, December 31, 1983, and no valid discovery may be made after that time on any location purportedly made before that time.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§ 3823.2 Mineral locations within National Forest Wilderness.

(a) Until midnight, December 31, 1983, the mining laws of the United States and the regulations of this chapter pertaining thereto, including any amendments thereto effective during such period, shall to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(b) All mineral locations established after September 3, 1964, and lying within the National Forest Wilderness, shall be held and used solely for mining or processing operations and uses incident thereto, and such locations shall carry with them no rights in excess of those rights which may be patented under the provisions of § 3823.3 of this chapter.

(c) All persons wishing to carry on any activity under the mining laws on lands within National Forest Wilderness, on or after September 3, 1964 should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing activities to be performed thereon in connection with the locations of mining claims.

§ 3823.3 Mineral patents within National Forest Wilderness.

(a) Each patent issued under the U.S. mining laws for mineral locations established after September 3, 1964, or validated by discovery of minerals occurring after September 3, 1964, and lying within National Forest Wilderness shall, in accordance with the provisions of section 4(d)(3) of the Wilderness Act:

(1) Convey title to the mineral deposits within the patented lands, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the National Forest rules and regulations;

(2) Reserve to the United States all title in or to the surface of the lands and products thereof; and

(3) Provide that no use of the surface of the patented lands or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as expressly provided in the Wilderness Act.

(b) Each patent to which the provisions of this section are applicable shall contain the express condition that the use of the patented lands shall be subject to regulations prescribed by the Secretary of Agriculture as referred to in § 3823.2 of this subpart and that the patented lands shall be held open for reasonable inspection by authorized officers of the U.S. Government for the purpose of observing compliance with the provisions thereof.

§ 3823.4 Withdrawal from operation of the mining laws.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from the operation of the mining laws by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

Subpart 3824—City of Prescott, Arizona, Watershed

§ 3824.1 Mining locations.

(a) The Act of January 19, 1933 (47 Stat. 771; 16 U.S.C. 482a) applies to approximately 3,600 acres in the city of Prescott municipal watershed, within the Prescott National Forest, Arizona. Rights acquired under mining locations made after the date of the act on any of the described lands are limited to the right to occupy and use so much of the surface of the land covered by the location as is reasonably necessary to carry on prospecting and mining, including the taking of mineral deposits and timber required by or in the mining operations; and patents for such locations shall convey title to the mineral deposits and a limited right to cut and remove timber for mining purposes, such patent to reserve to the United States all title in or to the surface of the lands and products thereof.

(b) The authorized officer will note on the face of all applications for patent for mining claims embracing any of the described lands that the same are subject to the conditions, provisions, limitations, and reservations of the Act except applications for claims located prior to the date of the act and as to which the applicants expressly request patent under the provisions of the general mining laws. Patents issued subject to the act will contain appropriate conditions with respect to cutting of timber and reservation of surface in the United States.

(c) Under section 3 of the Act (47 Stat. 771; 16 U.S.C. 482a), valid claims existing at the date of the act and thereafter maintained may be perfected under this act or under the law under which they were initiated, as the claimant may desire. Such claimant may, therefore, continue the development of his claim under the provisions of the act and secure patent for the mineral deposits only under its provisions, or he may continue to hold under the general mining laws and secure patent which will convey to him the surface as well as the minerals in the claim.

[35 FR 9746, June 13, 1970]

Subpart 3825—Papago Indian Reservation, Arizona

§ 3825.0-3 Authority.

(a) The Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended by the Act of August 28, 1937 (50 Stat. 862; 25 U.S.C. 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

(b) The regulations in this part apply to entries made prior to May 27, 1955. By virtue of the Act of May 27, 1955 (69 Stat. 67; 25 U.S.C. 463) mineral entries may no longer be made within the Papago Indian Reservation.

[35 FR 9747, June 13, 1970]

§ 3825.1 Mining locations in Papago Indian Reservation in Arizona.

(a) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements prescribed in this section.

(b) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(c) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(d) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to $1 for each acre and $1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(e) The Act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not quired, such sums due as annual re als but not paid during the period patent application shall be deduc from the sum deposited in lieu annual rental. Applications for refu shall be filed in the office of the ma ager and should follow the gener procedure in applications for repa ment.

(f) Water reservoirs, charcos, wat holes, springs, wells, or any other for of water development by the Unite States or the Papago Indians shall no be used for mining purposes under th terms of the said Act of August 2 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(g) A mining location may not be located on any portion of a 10 acre lega subdivision containing water reservoirs, charcos, water holes, springs wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Counci which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(h) The term *locator* wherever used in this section shall include and mea his successors, assigns, grantees, heirs and all others claiming under or through him.

[35 FR 9747, June 13, 1970]

Subpart 3826—National Park Servic Areas

SOURCE: 35 FR 9747, June 13, 1970, unles otherwise noted.

§ 3826.1 Mount McKinley National Par Alaska.

§ 3826.1-1 Registration of prospectors an miners.

Before entering the Park for the purpose of prospecting or locating any mining claim under the public land mining laws on lands therein, or prior to engaging in exploration or mining on any mining claim theretofore located, all prospectors and miners shall register with the Superintendent, furnishing the information required on the registration form hereinafter set forth.

(a) *Registration form.* The aforesaid registration form shall be substantially as follows:

Form No. ——————————

(——————, ——————)

REGISTRATION OF PROSPECTORS AND MINERS

UNITED STATES

DEPARTMENT OF THE INTERIOR

National Park Service

Mount McKinley National Park

Pursuant to the regulations of the Secretary of the Interior (36 CFR 7.44) governing the surface use of mineral claims located within the boundaries of the Mount McKinley National Park, Alaska, and to provide for the proper registration of prospectors and miners on lands within said Park, the following information is furnished:

1. Name and address of registrant: ——————

——————————————————————

——————————————————————

NOTE: If registrant is an agent, this fact should be indicated and the name and address of his principal should be furnished in addition to registrant's name and address. If registrant is in charge of a party, then only the chief of the party need register; however, the names and addresses of all members of the party must be listed herein, or on a separate sheet of paper attached hereto.

2. Is registrant a citizen of the United States? ——————. If registering for a party in which he is in direct charge, is each member of the party a citizen of the United States? ——————. If registrant is an agent, is the principal a citizen of the United States? ——————.

3. If this registration is for the purpose of prospecting for minerals prior to the location of a mining claim, state the general area to be covered.

——————————————————————

4. If this registration is for the purpose of further prospecting, development, or mining on a mining claim heretofore located, describe the exact location of such claim or claims, furnishing evidence of filing.

——————————————————————

5. Type of mineral to be prospected for or mined.

——————————————————————

6. Equipment to be used.

——————————————————————

7. Date prospecting or mining will commence —————————— and expected cessation of operations and departure from the Park. ——————————————

The foregoing registration is made this —— day of ——————, 19——, with the understanding that it is good for one year only from the date hereof and must be renewed if activities are to be carried on within the Park after the said expiration date. A copy of this registration, duly accepted and recorded, shall be retained by the registrant at all times as evidence of his compliance with the said regulations of the Secretary of the Interior.

——————————————————————

(Signature of registrant)

Accepted and recorded:

——————————————————————

Superintendent,
Mount McKinley National Park

§ 3826.1–2 Surface use of mineral land locations.

(a) (1) The surface use of mining claims shall be restricted to purposes of mineral exploration and development unless other uses of the surface are authorized, in writing, by the Regional Director.

(b) Prospectors and miners may open or construct roads or vehicle trails after first obtaining a permit therefor from the Regional Director. Applications for such permits may be made to the Superintendent. Each such application shall be accompanied by a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail.

(c) Timber may be cut and removed from a mining claim or access road with the prior permission of the Superintendent, who shall designate the timber which may be cut and removed. All slash, brush, or debris resulting from the cutting of timber shall be disposed of by the prospector or miner in such manner and at such times as may be designated by the Superintendent.

§ 3826.2 Olympic National Park.

(a) By the Act of Congress approved June 29, 1938 (52 Stat. 1241; 16 U.S.C. 251-255), the Mount Olympus National Monument was abolished and certain described lands, including the lands in the Monument, were reserved, withdrawn from disposal, and dedicated and set apart as a public park to be known as the Olympic National Park. The act provides that valid existing claims shall not be affected thereby.

(b) Section 2 of the Act provides: That in the areas of said park lying east of the range line between ranges 9 and 10 and north of the seventh standard parallel, and east of the range line between ranges 4 and 5 west, Willamette meridian, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws for a period of five years from the date of approval of this Act, with rights of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3826.2-1 Mining locations during 5-year period.

Under the provisions of section 2 of the Act the lands within the area described in that section are, for a period of 5 years from the date of the act, open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made within the 5-year period will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior. No prospecting may be done or locations made on the land after the expiration of the 5-year period from the date of this act but the right to remove mineral deposits from valid locations made during the 5-year period may be maintained thereafter by complying with the requirements of the United States mining laws and the regulations in this subpart.

§ 3826.2-2 Cutting of timber.

The locator of a mining claim within the area described in section 2 of the Act may cut timber within the boundaries of his claim for mining and domestic uses only with the permission of the superintendent of the park or his representative who will designate the timber to be cut All slash, brush or debris resulting from the cutting of timber upon mining claims shall be disposed of by the locator in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

§ 3826.2-3 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the park upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the superintendent of the park, so long as it is used by the permittee or his successors.

§ 3826.2-4 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by section 2 of the Act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this section of the act will be entitled to such right. A locator or patentee shall not be entitled to the exclusive use of any hot or mineral springs which may be within the boundaries of his claim, or to any use of such springs for other than mining purposes. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this park. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the park.

§ 3826.2-5 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to section 2 of the Act will terminate when the minerals are mined out or the claim is abandoned. Any locator of an unpatented claim who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim, and his right of occupation and use of the surface of the claim considered at an end.

§ 3826.2-6 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under section 2 of the Act should be noted "Olympic National Park Lands", and all patents issued for such claims will convey title to the minerals under this act and this subpart.

§ 3826.3 Mining locations in Death Valley National Monument, California.

§ 3826.3-1 Mining.

Mining in Death Valley National Monument is subject to the following regulations, which are prescribed to govern the surface use of claims therein:

(a) The claim shall be occupied and used exclusively for mineral exploration and development and for no other purpose except that upon written permission of an authorized officer or employee of the National Park Service the surface of the claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(b) The owner of the claim and all persons holding under him shall conform to all rules and regulations governing occupancy of the lands within the National Monument.

(c) The use and occupancy of the surface of mining claims as prescribed in paragraphs (a) and (b) of this section shall apply to all such claims located after the date of the Act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447), within the limits of the National Monument as fixed by Proclamation No. 2028 of February 11, 1933, and enlarged by Proclamation No. 2228 of March 26, 1937, and to all mining claims on lands hereafter included in the National Monument, located after such inclusion, so long as such claims are within the boundaries of said Monument.

(d) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. Applications for permits shall be accompanied by a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee's maintaining the road or trail in a passable condition as long as it is used by the permittee or his successors.

(e) From and after the date of publication of this section, no construction, development, or dumping upon any location or entry, lying wholly or partly within the areas set forth in paragraphs (e)(1) to (3) of this section, shall be undertaken until the plans for such construction, development, and dumping, insofar as the surface is affected thereby, shall have been first submitted to and approved in writing by an authorized officer or employee of the National Park Service:

(1) All land within 200 feet of the center-line of any public road.

(2) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or

within one quarter of a mile thereof on unsurveyed public land.

(3) All land within any site developed or approved for development by the National Park Service as a residential, administrative, or public campground site. Such sites shall include all land within the exterior boundaries thereof as conspicuously posted by the placing of an appropriate sign disclosing that the boundaries of the developed site are designated on a map of the site which will be available for inspection in the office of the Superintendent. If not so posted, such sites shall include all land within 1,000 feet of any federally owned buildings, water and sewer systems, road loops, and camp tables and fireplaces set at designated camp sites.

§ 3826.3-2 Use of water.

No works or water system of any kind for the diversion, impoundment, appropriation, transmission, or other use of water shall be constructed on or across Monument lands, including mining claims, without a permit approved by an authorized officer or employee of the National Park Service. Application for such permit shall be accompanied by plans of the proposed construction. The permit shall contain the following conditions: (a) No diversion and use of the water shall conflict with the paramount general public need for such water; (b) such water systems shall include taps or spigots at points to be prescribed by the Superintendent, for the convenience of the public; and (c) all appropriations of water, in compliance with the State water laws, shall be made for public use in the name of the United States and in accordance with instructions to be supplied by an authorized officer or employee of the National Park Service.

§ 3826.3-3 Permits.

Application for any permit required by this section shall be made through the Superintendent of the Monument.

§ 3826.3-4 Filing of copies of mining locations.

From and after the publication of this paragraph, in order to facilitate the administration of the regulations in this part, copies of all mining loc tions filed in the Office of the Count Recorder shall be furnished to th office of the Superintendent, Deat Valley National Monument, by th person filing the mining location in hi own behalf or on behalf of any othe person.

§ 3826.4 Glacier Bay National Monument Alaska.

§ 3826.4-1 Mining locations.

(a) Under the Act of June 22, 1936 (49 Stat. 1817), the lands in the Glacier Bay National Monument, reserved by proclamation of February 26, 1925 (43 Stat. 1988), or as it may be extended are open to prospecting for the kinds of mineral now subject to location under the United States mining laws, and, upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations, duly made, will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior.

(b) The owner of a mining location may cut such timber within the boundaries of his claim as is necessary for mining purposes. Prospectors may cut timber for their necessary mining and domestic uses only with the permission of the custodian of the monument or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims or by prospectors shall be disposed of by the claimant or prospector in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

(c) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition so long as it is used by the permittee or his successors.

(d) Occupation and use of the surface of an unpatented mining claim is restricted by the general law to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Upon written permission of the Director of the National Park Service or his representative, the surface of such claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(e) Prospectors and miners shall at all times conform to any rules prescribed or which may be made applicable by the Director of the National Park Service to the national monument.

(f) The Park regulations for the protection of wildlife provide:

> The national monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited.
>
> Firearms, traps, seines, and nets are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative.

(g) The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to the Act of June 22, 1936, will terminate when the minerals are mined out or the claim is abandoned. Any owner of an unpatented location who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim and his right of occupation and use of the surface of the claim considered at an end.

(h) Applications for patents and final certificates issued thereon for mining claims in this monument should be noted "Glacier Bay National Monument Lands", and all patents issued for claims under the act will convey title to the minerals only, and contain appropriate reference to the act and the regulations issued thereunder.

§ 3826.5 Organ Pipe Cactus National Monument, Arizona.

By the Act of Congress approved October 27, 1941 (55 Stat. 745; 16 U.S.C. 450z), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3826.5-1 Mining locations.

The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals.

§ 3826.5–2 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.

§ 3826.5–3 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this act will terminate when the minerals are mined out or the claim is abandoned.

§ 3826.5–4 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Oregon Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the act and these regulations.

§ 3826.5–5 Destroying vegetation prohibited.

The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.

§ 3826.5–6 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.

§ 3826.5–7 Lands containing certain features not subject to location.

Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.

Subpart 3827—King Range National Conservation Area

AUTHORITY: Sec. 5, King Range Conservation Area Act (16 U.S.C. 460y).

SOURCE: 41 FR 15852, Apr. 15, 1976, unless otherwise noted.

§ 3827.0–1 Purpose.

These regulations set forth rules and procedures for prospecting, location of a mining claim, annual assessment work, exploration and development and other mining operations on lands within the Area so as to minimize adverse environmental impacts, protect the scenic and esthetic values against undue impairment and assure against pollution of the streams and waters within the Area.

§ 3827.0–3 Authority.

(a) The Act of October 21, 1970 (16 U.S.C. 460–y), affirms the applicability of the United States mining laws to the federally owned lands within the Area. It also authorizes the Secretary of the Interior to prescribe regulations under which activities under the mining laws and patents issued pursuant to it shall be subject.

(b) Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) authorizes and directs that, to the fullest extent possible, the policies, regulations and laws of the United States shall be interpreted and administered in accordance with the policies of that Act.

§ 3827.0-5 Definitions.

(a) The term *Area* in this subpart means those lands and boundaries described in Vol. 39, No. 189, FR p. 34693 of September 27, 1974 which the Secretary of the Interior established as the King Range National Conservation Area and any additions thereto.

(b) *Mining claim* as used in this subpart means any unpatented claim, millsite, or unpatented tunnel site authorized by the Mining Law of 1872, as amended (30 U.S.C. 22 *et seq.*).

(c) *Casual use* as used in this subpart means activity which is limited to practices which ordinarily lead to only negligible disturbance or damage to lands, resources, and improvements, and does not threaten public health and safety. For example, activities which do not involve cutting of vegetation, use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are *casual use.*

(d) *Plan of operation* as used in this subpart means an application for authorization containing information called for in this subpart to conduct activities under the United States mining laws.

(e) *Primitive areas.* Natural, wild and undeveloped areas and settings essentially removed from the effects of civilization where the natural environment has not been disturbed by commercial utilization and the areas are without mechanized transportation.

§ 3827.0-7 Scope.

(a) All prospecting commenced or conducted, and all mining claims located within the boundaries of the area after October 21, 1970, are subject to the regulations in this subpart.

(b) Rights of owners of mining claims valid on October 21, 1970, and thereafter maintained as valid mining claims are not limited or restricted by the regulations of this subpart.

(c) Any patent issued on any mining claim located after October 21, 1970, shall continue to be subject to the regulations in this subpart. This provision shall be incorporated in such patent.

§ 3827.1 Plan of operation.

(a) Prior to the commencement of any prospecting, location of a mining claim, annual assessment work, exploration and development or other mining operations any of which would involve more than casual use as determined by the Secretary of the Interior within the Area defined above, a plan of operation must be filed and approved by the authorized officer.

(b) The plan of operation shall include:

(1) A copy of all notices of mining location and notices of assessment work of the mining claims involved in the plan;

(2) The name and address of the operator(s) and the owner(s) if operations are to be conducted by other than the owner(s). If any of the foregoing are other than individual proprietors, the names and addresses of the principal officers of the business entity and the person(s) designated to represent such entity with the Department of the Interior shall be included;

(3) A description sufficient to identify the area or areas on the ground within which the operations are being conducted or are to be conducted, and the estimated period of activity;

(4) A map or sketch of access routes used or to be used and the description of the means of transportation used or to be used, submitted in compliance with the provisions of § 3827.1-1(d) of this subpart;

(5) A map or sketch showing the location of existing and proposed roads within mining claims, a description of the type and standard of such existing and proposed roads, and a description of the means of transportation used or to be used;

(6) A list of equipment and a description of facilities used or to be used in the operations;

(7) A description of the methods of operation used or to be used;

(8) A map or sketch showing the location and size of areas upon which it is expected vegetation or soil will be distributed;

(9) A description of the effects the operations are having or may have upon the environment and forest resources; and

(10) A description of the measures used or to be used to minimize the adverse environmental impacts of the operations, including the measures to be

taken to meet the requirements of § 3827.2 of this subpart.

(c) The plan of operations shall cover the requirements set forth in paragraph (a) of this section, for the entire operation for the full estimated period of activity. However, if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any operations not covered by the initial plan.

(d) At any time during operations under an initial or supplemental plan of operation if there are indications of significant adverse impacts that were not anticipated at the time the plan was prepared and approved, the authorized officer may, after discussion with the operator, serve written notice describing the changed conditions or unforeseen environmental circumstances occurring or about to occur and require the operators to submit a proposed modification to the initial or supplemental plan detailing the means of minimizing unforeseen significant adverse environmental impacts. The decision of the authorized officer to modify a plan is subject to appeal, in accordance with 43 CFR 4.411.

(e) Determination as to whether an environmental impact statement will be prepared will be on a case-by-case basis and will follow the Guidelines of the Council on Environmental Quality (40 CFR part 1500), with special consideration given to lands identified as *primitive* under the King Range Management Program.

(f) The existence of an approved plan of operation for prospecting or location of a claim does not preclude the authorized officer from denying approval of plans for subsequent exploration or development of that claim upon a finding that such operation will unduly impair environmental values of the area.

§ 3827.1-1 Approval; access; inspection.

(a) *Review of plan.* No operations, except those determined to be casual use as defined herein, shall be conducted unless they are in accordance with an approved plan of operation. A proposed plan of operation shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. Within thirty (30) days of such receipt, the authorized officer shall:

(1) Notify the operator that the plan of operation is approved or rejected; or

(2) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed. However, days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(4) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in paragraph (d) of this section.

(b) *Appeal from rejection.* Any rejection under paragraph (a)(1) of this section shall afford a right of appeal in accordance with 43 CFR 4.411.

(c) *Supplemental plan.* A supplemental plan or plans of operations provided for in paragraph (b) of this section and a modification of an initial or supplemental plan as provided for in paragraph (c) of this section shall be subject to approval in the same manner as the initial plan of operations.

(d) *Access.* An operator shall be entitled to access in connection with operations but no road or other means of access, including but not limited to landing areas for aircraft, shall be constructed or improved until the operator has received authorization in writing from the authorized officer. Application for such access shall be filed in the appropriate district office of the Bureau of Land Management and shall include a description of the type and standard of the proposed means of access, a plat showing the proposed route of access, and a description of the means of transportation to be used. Authorization for such access shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest resources, including, but not limited to, vegetative screening and other measures to protect scenic values and to insure against erosion and water or air pollution. Any access granted on lands identified as *primitive areas* under the King Range Management Program shall be limited to non-mechanized means, wherever necessary in the discretion of the Secretary, to preserve environmental, primitive and scenic values.

(e) *Inspection.* Operations are subject to inspection to determine if the operator is complying with the regulations in this part and an approved plan of operations.

§ 3827.2 Requirements for environmental protection.

All plans of operations shall contain appropriate terms and conditions for the protection of the environment including but not limited to stipulations covering air quality, water quality, solid wastes, scenic values, fishery habitat, roads, and surface reclamation and rehabilitation.

§ 3827.3 Performance bonds.

(a) To assure that an operator will faithfully comply with the regulations in this part and adhere to an approved plan of operations, a performance bond in a minimum amount of $100 will be required prior to approval of each plan of operations except where only prospecting is involved and there is no surface disturbance. In lieu of a performance bond, the operator may deposit into a Federal depository, as directed by the Bureau of Land Management, and maintain therein, cash in an amount equal to the required amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the nature of the reclamation and restoration requirements and the estimated costs of reclamation and restoration in the event that the operator forfeits his performance bond. This consideration will include

(1) The size of the operations;

(2) The estimated damage to the environment and the Area if the operator fails to comply with the regulations in this part or fails to adhere to the approved plan of operations;

(3) The estimated cost of stabilizing, rehabilitating and restoring the area of operations; and

(4) The type and amount of access to be constructed in connection with operations.

(c) In the event that an initial plan of operations is supplemented or modified in accordance with § 3827.1-1 (b) and (c) of this subpart, the authorized officer will review the initial performance bond for adequacy and, if necessary, will adjust the performance bond to conform to the plan of operations as supplemented or modified.

(d) When the operations have been conducted and completed in accordance with the regulations in this subpart and the approved plan of operations, the authorized officer will notify the operator that the period of liability under the bond has terminated.

§ 3827.4 Use of mining claims restricted surface resources.

Restrictions on the use of mining claims in addition to the regulations in this subpart are provided in 30 U.S.C. 611 and the regulations in 43 CFR 3712.1(a).

§ 3827.5 Noncompliance.

If an operator fails to comply with the regulations or his approved plan of operations, the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action necessary to comply and the time within which such action must be completed, generally not to exceed thirty (30) days. The authorized officer shall require immediate suspension of operations if noncompliance is causing environmental damage.

§ 3827.6 Trespass.

Any mining operations conducted on lands within the Area without an approved plan of operations shall constitute a trespass.

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3831—Rights to Mineral Lands

Sec.
3831.1 Manner of initiating rights under locations.

Subpart 3832—Who May Make Locations

3832.1 Qualifications.

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites

3833.0-1 Purpose.
3833.0-2 Objectives.
3833.0-3 Authority.
3833.0-5 Definitions.
3833.1 Recordation of mining claims.
3833.1-1 Recordation of mining claims, mill sites and tunnel sites located on or before October 20, 1976.
3833.1-2 Recordation of mining claims, mill sites and tunnel sites located after October 21, 1976.
3833.1-3 Service charges.
3833.1-4 Effective date of service charges.
3833.2 Annual filings.
3833.2-1 National Park System lands.
3833.2-2 Other Federal lands.
3833.2-3 Consistency between the Federal Land Policy and Management Act and the General Mining Law of May 10, 1872.
3833.2-4 Contents for evidence of assessment work.
3833.2-5 Contents for a notice of intention to hold claim or site.
3833.2-6 When evidence or notice is not required.
3833.3 Notice of transfer of interest.
3833.4 Failure to file.
3833.5 Effect of recording and filing.

AUTHORITY: 30 U.S.C. 22, secs. 2319 and 2478 of the R.S., as amended (43 U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907, and 43 U.S.C. 1734, 1740, 1744, and 1782.

Subpart 3831—Rights to Mineral Lands

§ 3831.1 Manner of initiating rights und locations.

Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and upon the discovery of minerals, by locating the lands upon which such discovery has been made. A location is made by (a) staking the corners of the claim, except placer claims described by legal subdivision where State law permits locations without marking the boundaries of the claims on the ground, (b) posting notice of location thereon, and (c) complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

(See 38 FR 24650, Sept. 10, 1973)

Subpart 3832—Who May Make Locations

§ 3832.1 Qualifications.

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

[35 FR 9750, June 13, 1970]

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites

NOTE: The information collection requirements contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0114. The information is being collected to meet the requirements of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) to allow the Bureau of Land Management to record mining claims and annual filings (evidence of annual assessment work or notice of intent to hold) properly. This information will be used to verify that the claimant continued to have an interest in the mining claims or sites as provided for in the statute. The obligation to respond is mandatory.

(See 47 FR 56304, Dec. 15, 1982.)

§ 3833.0-1 Purpose.

The purpose of the regulations is to establish procedures for:

(a) The recordation in the proper BLM office of unpatented mining claims, mill sites, or tunnel sites on Federal lands;

(b) The filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim;

(c) Notifying the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites, or tunnel sites.

(d) These regulations are not intended to supersede or replace existing recording requirements under state law except when specifically changed by the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and are not intended to make the Bureau office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

[47 FR 56304, Dec. 15, 1982]

§ 3833.0-2 Objectives.

The objectives of these regulations are:

(a) To determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands in order to assist in the surface management of those lands and the mineral resources therein;

(b) To remove any cloud on the title to those lands that may exist because they are subject to mining claims that may have been abandoned;

(c) To provide the BLM with information as to the location of active mining claims;

(d) To keep the BLM informed of transfers of interest in unpatented mining claims, mill sites, or tunnel sites.

[47 FR 56304, Dec. 15, 1982]

§ 3833.0-3 Authority.

(a) Section 314 (a) and (b) of the Act (43 U.S.C. 1744) require the recordation of unpatented mining claims, mill sites, and tunnel sites and the filing of information concerning annual assessment work performed or a notice of intention to hold mining claims in the proper BLM office within specified time periods. Section 314(c) of the Act sets forth the consequences of the failure to file such information or documents within the time limits prescribed.

(b) The Secretary has the general responsibility and authority for the management of Federal lands under 43 U.S.C. 2 and section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740).

(c) The General Mining Law of May 10, 1872, section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Act of August 31, 1951 (31 U.S.C. 9701) and section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56304, Dec. 15, 1982; 53 FR 48881, Dec. 2, 1988]

§ 3833.0-5 Definitions.

As used in this subpart:

(a) *The Act* means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

(b) *Unpatented mining claim* means a lode mining claim or a placer mining claim located and held under the General Mining Law of 1872, as amended (30 U.S.C. 21-54), for which a patent under 30 U.S.C. 29 and 43 CFR part 3860 has not been issued.

(c) *Mill site* means any land located under 30 U.S.C. 42 for which patent under 30 U.S.C. 42 and 43 CFR part 3860 has not been issued.

(d) *Tunnel site* means a tunnel located pursuant to 30 U.S.C. 27.

(e) *Owner* means the person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim, mill or tunnel site. The owner shall be identified in the instruments required by these regulations by a notation on those instruments.

(f) *Federal lands* means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, supra, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) *Proper BLM office* means the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located. Notwithstanding the requirements of § 1821.2-1(d) of this title, filings made under this subpart in Alaska may be filed in either office in that State.

(h) *Date of location* or *located* means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) *Copy of the official record* means a legible reproduction or duplicate, except microfilm, of the instrument which was or will be filed under state law in the local jurisdiction where the claim or site is located. It also includes and exact reproduction, duplicate, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

(j) *Affidavit of assessment work* means the instrument required under state law that certifies that assessment work required by 30 U.S.C. 28 has been performed on, or for the benefit of, a mining claim or, if state law does not require the filing of such an instrument, an affidavit evidencing the performance of such assessment work; and

(k) *Notice of intention to hold a mining claim* means an instrument containing the information required in § 3833.2-5 of this title which has been or will be filed under state law in the local jurisdiction indicating that the owner continues to have an interest in the claim.

(l) *Notice of intention to hold a mill or tunnel site* means an instrument containing the information in the form required in § 3833.2-5 of this title indicating that the owner continues to hold an interest in the site.

(m) *Filed or file* means being received and date stamped by the proper BLM office. For the purpose of complying with § 3833.2 of this title, *timely filed* means being filed within the time period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law. This 20 day period does not apply to a notice of location filed pursuant to § 3833.1-2 of this title. (See § 1821.2-2(e) of this title where the last day falls on a date the office is closed.)

(n) *Assessment year* is defined in 30 U.S.C. 28 and commences at 12 o'clock noon on September 1st of each year. For the purpose of complying with the requirements of section 314(a) of the Act, the calendar year in which the assessment year ends is the year for which the evidence of annual assessment work shall be filed.

(o) *Filing year* for the purposes of complying with the Act begins on January 1st of each year and continues through December 30th.

(p) *Amended location* means a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground. An amendment may:

(1) Correct or clarify defects or omissions in the original notice or certificate of location; or

(2) Change the legal description, mining claim name, position of discovery or boundary monuments, or similar items.

An amended location notice relates back to the original location notice date. No amendment is possible if the original location is void.

(q) *Relocation* means the establishment of a new mining claim, mill site, or tunnel site. A relocation may not be established by the use of an *amended location notice*, but requires a new original location notice or certificate as prescribed by state law.

(r) *Annual filing* means either an affidavit of assessment work or a notice of intention to hold the mining claim, mill site, or tunnel site.

(s) *Authorized officer* means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56304, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 53 FR 48881, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990]

§ 3833.1 Recordation of mining claims.

§ 3833.1-1 Recordation of mining claims, mill sites and tunnel sites located on or before October 20, 1976.

(a) Mining claims and sites which were located prior to October 21, 1976, the effective date of the Act, but which had not been recorded in the proper BLM office on or before October 22, 1979, as required by the Act, are by law conclusively deemed abandoned and void. There is no statutory provision for accepting a notice or certificate of location for such an abandoned and void claim or site.

(b) No unit of the National Park System remained open to mining claim location after September 28, 1976. All mining claims, mill sites, and tunnel sites located in a unit of the National Park System on that date were required to be recorded with the National Park Service on or before September 28, 1977, or they were, by operation of law, deemed conclusively to be abandoned and void.

47 FR 56305, Dec. 15, 1982, as amended at 3 FR 48881, Dec. 2, 1988]

§ 3833.1-2 Recordation of mining claims, mill sites and tunnel sites located after October 21, 1976.

(a) The owner of an unpatented mining claim, mill site or tunnel site located after October 21, 1976, on Federal lands, excluding lands within units of the National Park System shall file within 90 days after the date of location of that claim or site in the proper BLM office, a copy of the official record of the notice or certificate of location of that claim or site that was or will be filed under state law. If state law does not require the recordation of a notice or certificate of location of a claim or site, a notice or certificate of location containing the information in paragraph (b) of this section shall be filed.

(b) The copy of the notice or certificates filed in accordance with paragraph (a) of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites a description shall be furnished.

(i) This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim to within a 160 acre quadrant of the section (quarter section), or sections, if more than one is involved, and the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable.

(ii) The location of the claims or sites shall be depicted on either a topographic map published by the U.S. Geological Survey or by a narrative or a sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic, or man-made feature. Such map, narrative description, or sketch shall set forth the boundaries and position of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or mineral interests in such lands to identify and locate the claims or sites on the ground.

(iii) More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified;

(6) In place of the requirements of paragraph (b)(5) of this section, an approved mineral survey may be supplied. A mining claim described by legal subdivisions, section, township, range, meridian and State fulfills the requirements of paragraph (b)(5) of this section.

(7) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

[42 FR 5300, Jan 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 47 FR 56305, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 55 FR 17754, Apr. 27, 1990]

§ 3833.1-3 Service charges.

(a) All service charges shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior—Bureau of Land Management.

(b) Each mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a nonrefundable service charge of $10.00.

(c) Annual filings submitted pursuant to § 3833.2 of this title shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(d) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(e) Transfers of interest filed pursuant to § 3833.3 of this title shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site affected.

[53 FR 48881, Dec. 2, 1988]

§ 3833.1-4 Effective date of service charges.

(a) *Prior to January 1, 1991.* Filings that are not accompanied by the service charges set forth in § 3833.1-3 of this title shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of such deficiency notice by the authorized officer. Failure to submit the proper service charge shall cause the filing to be rejected and returned to the claimant/owner.

(b) *Beginning January 1, 1991.* Filings that are not accompanied by the proper service charges set forth in § 3833.1-3 of this title shall not be accepted and will be returned to the claimant/owner without further action.

[53 FR 48881, Dec. 2, 1988]

§ 3833.2 Annual filings.

§ 3833.2-1 National Park System lands.

(a) For all mining claims, mill sites, and tunnel sites located within a unit of the National Park System that was recorded on or before September 28, 1977, an annual filing shall be submitted to the proper BLM office on or before December 30 of each succeeding calendar year thereafter.

(b) Even though the National Park Service, except under certain limited circumstances described in 36 CFR part 9, subpart A, does not permit surface disturbing actions to occur in units of the National Park System, a notice of intent to hold should be filed for mining claims and sites located within these units. If the owner has received National Park Service approval for surface disturbing actions under 36 CFR part 9, subpart A, either a notice of intent or an affidavit of assessment work, as appropriate, should be filed.

(c) The provisions of this section shall apply to all mining claims, mill sites, and tunnel sites included in a unit of the National Park System because of an enlargement of the said unit after September 28, 1976.

(d) Evidence of annual assessment work for mining claims, mill sites, and tunnel sites located in a unit of the

National Park System shall be in the form prescribed by § 3833.2-4 of this Title. A notice of intention to hold such a claim or site shall be in the form prescribed in § 3833.2-5 of this title.

(e) The authorized officer shall forward copies of annual filings on mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

[53 FR 48881, Dec. 2, 1988]

§ 3833.2-2 Other Federal lands.

Unpatented mining claims, mill sites, and tunnel sites located on Federal lands which are not within a unit of the National Park System are subject to the following annual filing requirements:

(a) If a mining claim, mill site, or tunnel site located on or before October 20, 1976, was recorded in the proper BLM office prior to January 1, 1978, a notice of intention to hold or evidence of annual assessment work shall be filed in the proper BLM office on or before December 30, of the calendar year following the calendar year of its recordation, and of each calendar year thereafter.

(b) All owners of mining claims, mill ites, or tunnel sites located on or efore October 20, 1976, and recorded n the proper BLM office on or after anuary 1, 1978, and on or before Oc- ober 22, 1979, shall have filed a notice f intention to hold or evidence of nnual assessment work in the proper LM office on or before October 22, 979, and on or before December 30 of ach calendar year after 1979.

(c) Owners of mining claims, mill es, and tunnel sites located on or ter October 21, 1976, shall file a tice of intention to hold or evidence annual assessment work in the oper BLM office on or before De- nber 30 of the calendar year, follow- the calendar year of the location the mining claims, mill site, or nnel site.

d) Evidence of annual assessment rk shall be in the form prescribed in 333.2-4 of this title. A notice of in- tion to hold shall be in the form scribed in § 3833.2-5 of this title.

[53 FR 48881, Dec. 2, 1988]

§ 3833.2-3 Consistency between the Federal Land Policy and Management Act and the General Mining Law of May 10, 1872.

(a) The Federal Land Policy and Management Act requires that a notice of intention to hold or evidence of annual assessment work be filed on or before December 30 of each calendar year following the calendar year in which the mining claim, mill site, or tunnel site was located. To comply with the requirements of the Act for mining claims, mill sites, or tunnel sites located between September 1 and December 31 of a given calendar year, the claimant shall submit an annual filing on or before December 30, of the following calendar year for each location to prevent the mining claim, mill site, or tunnel site from being declared abandoned and void by operation of law.

(b) Evidence of assessment work filed under this subpart between January 1 and the following December 30 of the same calendar year shall be deemed to have been filed during that calendar year, regardless of what assessment year that work fulfilled under State law.

(c) Notice of intention to hold a mining claim, mill site, or tunnel site may be filed at the election of the owner, regardless of whether the assessment work has been suspended, deferred, or not yet accrued. However, the owner shall have filed with the Bureau of Land Management the same documents which have been or will be recorded with the local recordation office. There is no requirement to file a notice of intent to hold for a mill site or a tunnel site with the local recordation office. A notice of intention to hold a mining claim, mill site, or tunnel site shall be effective only to satisfy the filing requirement for the calendar year in which the notice is filed. The filing of a notice of intention to hold with the Bureau of Land Management shall not relieve the owner of complying with Federal and State laws pertaining to the performance of assessment work.

[53 FR 48882, Dec. 2, 1988]

§ 3833.2-4 Contents for evidence of assessment work.

Evidence of annual assessment work shall be in the form of either;

(a) An exact legible reproduction or duplicate, except microfilm of the evidence of assessment work which was performed under state law and was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the state where the claim or group of claims is located and recorded setting forth the additional information:

(1) The Bureau of Land Management serial number assigned to each claim upon filing of the notice, certificate of location in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An exact legible reproduction or duplicate, except microfilm, of the detailed report concerning geological, geochemical and geophysical surveys provided for by the Act of September 2, 1958 (30 U.S.C. 28-1) which has been or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979; 47 FR 56306, Dec. 15, 1982. Redesignated at 53 FR 48881, Dec. 2, 1988]

§ 3833.2-5 Contents for a notice of intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims may be filed at the election of the owner, regardless of whether the assessment has been suspended, deferred or not yet accrued. However, the claimant shall file with the Bureau of Land Management the same documents which have been or will be recorded with the county or local office of recordation. A notice of intention to hold a mining claim shall be effective only to satisfy the filing requirement for the year (as specified in § 3833.0-5 of this title), in which the notice is filed. The filing of a notice with the Bureau of Land Management shall not relieve the owner of complying with Federal and state laws pertaining to the performance of annual assessment work.

(b) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either:

(1) An exact legible reproduction or duplicate, except microfilm, of an instrument, signed by the owner of the claim of his/her agent, which was or will be filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the notice or certificate of location. Citing the serial number shall comply with the requirement in the Act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(2) A reference to the decision on file in the proper BLM office by date and serial number which granted a deferment of the annual assessment work.

(3) A reference to a pending petition for deferment of the annual assessment work required by 30 U.S.C. 28 by date of filing and serial number and with the proper BLM office.

(c) A notice of intention to hold a mill or tunnel site or group of mill or tunnel sites shall be in the form of a letter or other notice signed by the owner(s) of such sites or their agent(s) setting forth the following information:

(1) The Bureau of Land Management serial number assigned to each site upon filing in the proper BLM office of a copy of the official record

of the notice or certification of location;

(2) Any change in the mailing address, if known, of the owner(s) of the site(s).

[47 FR 56306, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983. Redesignated at 53 FR 48881, Dec. 2, 1988]

§ 3833.2-6 When evidence or notice is not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which complies with 43 CFR part 3860 has been filed and final certificate has been issued. (See 43 CFR 3851.5). The filing of an application and issuance of the final certificate will be deemed full compliance with the requirements of section 314(a) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.2.

[42 FR 5300, Jan. 27, 1977, as amended at 47 FR 56307, Dec. 15, 1982. Redesignated at 53 FR 48881, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990]

§ 3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with § 3833.1, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of ocation in the proper BLM office: and

(2) The name and mailing address of he person(s) to whom an interest in he claim has been sold, assigned, or therwise transferred.

(b) Whenever any person acquires n interest through inheritance in an npatented mining claim, mill site, or unnel site recorded in accordance ith § 3833.1, he shall file in the roper BLM office within 60 days ter completion of the transfer the information required by paragraph (a) of this section.

[42 FR 5300, Jan. 27, 1977, as amended at 55 FR 17754, Apr. 27, 1990]

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2 (a), 3833.2-1, and 3833.2-2 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

(b) The failure to file the information required in §§ 3833.1-2 (b) and 3833.2-5 (c) shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a decision from the authorized officer calling for such information. Failure to file the information requested by the decision of the authorized officer shall result in the mining claim, mill site, or tunnel site being deemed conclusively to be abandoned and it shall be void.

(c) The fact that an instrument is filed in accordance with other laws permitting filing for record thereof and is defective or not timely filed for record under those laws shall not be considered failure to file under this subpart. The fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill or tunnel site shall not affect the validity of this filing.

(d) Any mining claim deemed abandoned under section 314(c) of the Act for failure to file an instrument in the local jurisdiction of the State where the claim is located pursuant to section 314 (a)(1) and (b) of the Act, shall not be validated by filing the instrument with the BLM in accordance with § 3833.1, 3833.2-1, and 3833.2-2 of this title, and such instrument is ineffective even though the claim may currently be shown to exist in the BLM records.

(e) Title IV of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)) provides that where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744), and it is shown to the satisfaction of the authorized officer that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the authorized officer may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease consistent with the provisions of section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)) to be effective from the statutory date the claim was conclusively abandoned. The conditions and requirements for issuance of such leases are contained in § 3108.2-4 of this title.

[44 FR 9723, Feb. 14, 1979, as amended at 47 FR 56307, Dec. 15, 1982; 48 FR 7179, Feb. 18, 1983; 49 FR 30450, July 30, 1984; 53 FR 48882, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990]

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements. (30 U.S.C. 28) Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 of the Revised Statutes and with laws and regulations issued by any State or other authority relating to performance of annual assessment work.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or other Federal agency shall not excuse the filings required by this subpart and filings under this subpart shall not excuse the filing of instruments pertaining to mining claims under any other Federal law, except that filing a notice or certificate of location or an affidavit of annual assessment work under this subpart which is marked by the owner as also being filed under the Act of April 8, 1948 (62 Stat. 162) or the Act of August 11, 1955 (30 U.S.C. 621-625), will satisfy the recording requirement for O & C lands under 43 CFR subpart 3821 and Pub. L. 359 lands under 43 CFR part 3730, or as provided in § 3833.2 of this title.

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1-2 of this title and filed a notice of transfer of interest pursuant to § 3833.3 of this title or owners whose names show on annual filings shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified and served by certified mail sent to their last address of record. As provided in subpart 1810 of this title, all owners of record with the Bureau of Land Management shall be personally notified and served by certified mail, return receipt requested, sent to their last address of record. Such owners shall be deemed to have been served if the certified mail was delivered to that address of record, regardless of whether the certified mail was in fact received by them. The provisions of this subpart shall not be applicable to procedures for public notice required under part 3860 of this title with respect to mineral patent applications and to the procedures given in 43 CFR 4.450-5 concerning service in mineral contest actions.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

(g) Any person who files an instrument required by these regulations knowing the same to contain any false, fictitious or fraudulent statement or entry, may be subject to criminal penalties under 18 U.S.C. 1001.

(h) Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to part 4 of this title.

[42 FR 5200, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979; 47 FR 56307, Dec. 15, 1982; 53 FR 48882, Dec. 2, 1988; 55 FR 17754, Apr. 27, 1990]

PART 3840—NATURE AND CLASSES OF MINING CLAIMS

Subpart 3840—Types of Claims

Sec.

3840.1 Classes of mining claims.

Subpart 3841—Lode Claims

3841.1 Lodes located previous to May 10, 1872.
3841.2 Lodes must not have been adversely claimed.
3841.3 Discovery.
841.3-1 Discovery required before location.
841.3-2 Discovery work.
841.4 Describing locations.
841.4-1 Length of lode claims.
841.4-2 Width of lode claims.
41.4-3 Extent of surface ground.
41.4-4 Defining of locations.
41.4-5 Location notice; monumenting.
41.4-6 Recording of location notice.

Subpart 3842—Placer Claims

42.1 Placer claims: General.
42.1-1 Discovery.
42.1-2 Maximum allowable acreage.
42.1-3 Locations authorized in 10-acre units.
2.1-4 Manner of describing 10-acre units.
2.1-5 Conformity of placer claims to the public land surveys.
2.2 Building-stone placers.
2.3 Saline placers.
2.4 Petroleum placers.

Subpart 3843—Tunnel Sites

.1 Possessory right of tunnel proprietor.

Sec.

3843.2 Location of tunnel claims.
3843.3 Recording of notices.

Subpart 3844—Millsites

3844.0-3 Authority.
3844.1 Required use.

Subpart 3840—Types of Claims

§ 3840.1 Classes of mining claims.

Mining claims are of two distinct classes: lode claims and placers.

[35 FR 9750, June 13, 1970]

Subpart 3841—Lode Claims

Source: 35 FR 9750, June 13, 1970, unless otherwise noted.

§ 3841.1 Lodes located previous to May 10, 1872.

The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by 2322 and 2328, R.S. (30 U.S.C. 26, 33), by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 3841.2 Lodes must not have been adversely claimed.

It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 3841.3 Discovery.

§ 3841.3-1 Discovery required before location.

No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 3841.3-2 Discovery work.

The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

§ 3841.4 Describing locations.

§ 3841.4-1 Length of lode claims.

From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 3841.4-2 Width of lode claims.

No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

§ 3841.4-3 Extent of surface ground.

With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 3841.4-4 Defining of locations.

Section 5 of the Act of May 10, 1872, now section 2324, Revised Statutes (30 U.S.C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the Act of May 10, 1872 (17 Stat. 92; 30 U.S.C. 28) requires that all records of mining locations made subsequent to the date of said Act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

§ 3841.4-5 Location notice; monumenting.

(a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, wellknown points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter ase, how many feet are claimed upon ach side of such discovery point. As o the importance of monuments, and s to their paramount authority, see he Act of April 28, 1904 (33 Stat. 545; 0 U.S.C. 34), which amended R.S. 327.

3841.4-6 Recording of location notice.

The location notice must be filed for cord in all respects as required by e State or territorial laws, and local les and regulations, if there by any.

Subpart 3842—Placer Claims

ource: 35 FR 9751, June 13, 1970, unless erwise noted.

42.1 Placer claims: General.

42.1-1 Discovery.

ut one discovery of mineral is red to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§ 3842.1-2 Maximum allowable acreage.

(a) By R.S. 2330 (30 U.S.C. 36), it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

(b) R.S. 2331 (30 U.S.C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that it, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 3842.1-3 Locations authorized in 10-acre units.

By R.S. 2330 (30 U.S.C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§ 3842.1-4 Manner of describing 10-acre units.

A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§ 3842.1-5 Conformity of placer claims to the public land surveys.

(a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public survey is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L.D. 250.)

§ 3842.2 Building-stone placers.

The Act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

(a) Common varieties of building stone are, since the Act of July 23, 1955 (69 Stat. 367; 30 U.S.C. 611) no longer locatable under the mining laws.

(b) Uncommon varieties of building stone continue to be subject to the building stone placer supplement to the mining law, 30 U.S.C. 161.

§ 3842.3 Saline placers.

(a) Under the Act approved January 31, 1901 (31 Stat. 745; 30 U.S.C. 162), extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder." The saline placer act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 *et seq.*), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations.

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§ 3842.4 Petroleum placers.

The Act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder. This Act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

Subpart 3843—Tunnel Sites

Source: 35 FR 9752, June 13, 1970, unless otherwise noted.

§ 3843.1 Possessory right of tunnel proprietor.

The effect of R.S. 2323 (30 U.S.C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 eet from the face or point of commencement of such tunnel, and to pro- ibit other parties, after the com- nencement of the tunnel, from pro- pecting for and making locations of des on the line thereof and within aid distance of 3,000 feet, unless such des appear upon the surface or were reviously known to exist. The term ace," as used in said sections, is con- ued and held to mean the first work- g face formed in the tunnel, and to gnify the point at which the tunnel tually enters cover; it being from is point that the 3,000 feet are to be unted upon which prospecting is ohibited as aforesaid. R.S. 2323 pro- les: "Failure to prosecute the work the tunnel for six months shall be nsidered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

§ 3843.2 Location of tunnel claims.

To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

§ 3843.3 Recording of notices.

A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

Subpart 3844—Millsites

§ 3844.0-3 Authority.

The location and patenting of lands for millsite purposes is authorized by R.S. 2337 as amended by the Act of March 18, 1960. The Act, 30 U.S.C. 42, reads as follows:

> Patents for nonmineral lands.
>
> (a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced, and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21-24, 26-28, 29, 30, 33-48, 50-52, and 71-76 of this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.
>
> (b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode. (As amended Mar. 18, 1960, Pub. Law 86-390, 74 Stat. 7.)

[35 FR 9752, June 13, 1970]

§ 3844.1 Required use.

A millsite is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode or placer claim with which it is associated. A custom or independent millsite may be located for the erection and maintenance of a quartz mill or reduction works.

[35 FR 9752, June 13, 1970]

PART 3850—ASSESSMENT WORK

Subpart 3851—Assessment Work: General

Sec.

3851.1 Assessment work.
3851.1-1 Expenditures.
3851.2 Inclusion of surveys in assessment work.
3851.3 Effect of failure to perform assessment work.
3851.4 Failure of a co-owner to contribute to annual assessment work.
3851.5 Assessment work not required after patent certificate.

Subpart 3852—Deferment of Assessment Work

3852.0-3 Authority.
3852.1 Conditions under which deferment may be granted.
3852.2 Filing of petition for deferment; contents.
3852.3 Notice of action on petition to be recorded.
3852.4 Period for which deferment may be granted.
3852.5 When deferred assessment work is to be done.

AUTHORITY: 30 U.S.C. 22 *et seq.*

Subpart 3851—Assessment Work: General

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3851.1 Assessment work.

In order to hold the possessory right to a lode or placer location made after May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. The period within which the work required to be done shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of each claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims may be made on any one claim. Cornering locations are held not to be contiguous.

§ 3851.1-1 Expenditures.

The annual expenditure in the amount of $100, required by section R.S. 2324 (30 U.S.C. 28), must be made upon placer as well as lode locations.

§ 3851.2 Inclusion of surveys in assessment work.

(a) In addition to the several types of work that may fulfill the annual labor requirement, the requirement can also be satisfied by conducting geological, geochemical, and geophysical surveys. Pub. L. 85-876, Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1-2). Such surveys must be conducted by qualified experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim.

(2) Nature, extent and cost of the work performed.

(3) The basic findings of the surveys.

(4) The name, address and professional background of the person or persons conducting the work.

Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey of the same claim. Such surveys will not apply toward the statutory provision requiring the expenditure of $500 for each claim for mineral patent.

(b) As used in this section—

(1) The term *geological surveys* neans survey: on the ground for min- ral deposits by the proper application f the principles and techniques of the cience of geology as they relate to the earch for and discovery of mineral de- osits;

(2) The term *geochemical surveys* eans surveys on the ground for min- al deposits by the proper application the principles and techniques of the ience of chemistry as they relate to e search for and discovery of miner- deposits;

3) The term *geophysical surveys* ans surveys on the ground for min- l deposits through the employment generally recognized equipment and methods for measuring physical difference between rock types or discontinuities in geological formations;

(4) The term *qualified expert* means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

§ 3851.3 Effect of failure to perform assessment work.

(a) Failure of a mining claimant to comply substantially with the requirement of an annual expenditure of $100 in labor or improvements on a claim imposed by section 2324 of the Revised Statutes (30 U.S.C. 28) will render the claim subject to cancellation.

(b) Failure to make the expenditure or perform the labor required upon a location will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

[37 FR 17836, Sept. 1, 1972]

§ 3851.4 Failure of a co-owner to contribute to annual assessment work.

Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

[35 FR 9753, June 13, 1970. Redesignated at 37 FR 17836, Sept. 1, 1972]

§ 3851.5 Assessment work not required after patent certificate.

Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

[35 FR 9753, June 13, 1970. Redesignated at 37 FR 17836, Sept. 1, 1972]

Subpart 3852—Deferment of Assessment Work

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3852.0-3 Authority.

The Act of June 21, 1949 (63 Stat. 214; 30 U.S.C. 28b-c), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 3852.1 Conditions under which deferment may be granted.

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 3852.2 Filing of petition for deferment, contents.

(a) In order to obtain temporary deferment, the claimant must file with the authorized officer of the proper office, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one cop thereof a copy of the notice to th public required by the act whic shows that it has been filed or recorded in the office in which the notices o certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a $25 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

[35 FR 9753, June 13, 1970, as amended at 53 FR 48882, Dec. 2, 1988]

§ 3852.3 Notice of action on petition to be recorded.

The claimant must file or record, in the office in which he filed or recorded his notice of petition, a copy of the order or decision disposing of the petition.

§ 3852.4 Period for which deferment may be granted.

If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 3852.5 When deferred assessment work is to be done.

All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

PART 3860—MINERAL PATENT APPLICATIONS

Subpart 3861—Surveys and Plats

Sec.

3861.1 Surveys of mining claims.
3861.1-1 Application for survey.
3861.1-2 Survey must be made subsequent to recording notice of location.
3861.1-3 Plats and field notes of mineral surveys.
3861.2 Surveys: Specific.
3861.2-1 Particulars to be observed in mineral surveys.
3861.2-2 Certificate of expenditures and improvements.
3861.2-3 Mineral surveyor's report of expenditures and improvements.
3861.2-4 Supplemental proof of expenditures and improvements.
3861.2-5 Amended mineral surveys.
3861.3 Mineral surveyors.
3861.3-1 Extent of duties.
3861.3-2 Assistants.
3861.4 Contract for surveys.
3861.4-1 Payment.
3861.5 Appointment and employment of mineral surveyors.
3861.5-1 Appointment.
3861.5-2 Employment.
3861.6 Plats and notices.
3861.6-1 Payment of charges of the public survey office.
3861.7 Posting.
3861.7-1 Plat and notice to be posted on claim.
3861.7-2 Proof of posting on the claim.

Sec.

Subpart 3862—Lode Mining Claim Patent Applications

3862.1 Lode claim patent applications: General.
3862.1-1 Application for patent.
3862.1-2 Service charge.
3862.1-3 Evidence of title.
3862.1-4 Evidence relating to destroyed or lost records.
3862.1-5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.
3862.2 Citizenship.
3862.2-1 Citizenship of corporations and of associations acting through agents.
3862.2-2 Citizenship of individuals.
3862.2-3 Trustee to disclose nature of trust.
3862.3 Possessory rights.
3862.3-1 Right by occupancy.
3862.3-2 Certificate of court required.
3862.3-3 Corroborative proof required.
3862.4 Publication of notice.
3862.4-1 Newspaper publication.
3862.4-2 Contents of published notice.
3862.4-3 Authorized officer to designate newspaper.
3862.4-4 Charges for publication.
3862.4-5 Proof by applicant of publication and posting.
3862.4-6 Payment of purchase price and statement of charges and fees.
3862.5 Entry and transfers.
3862.5-1 Allowance of entry; transfers subsequent to application not recognized.
3862.6 Diligent prosecution.
3862.6-1 Failure to prosecute application with diligence.
3862.7 Application processing upon contest or protest.
3862.7-1 Resumption of patent proceedings after suspension due to adverse claim or protest.
3862.8 Patents for mining claims.
3862.8-1 Land descriptions in patents.

Subpart 3863—Placer Mining Claim Patent Applications

3863.1 Placer mining claim patent applications: General.
3863.1-1 Application for patent.
3863.1-2 Proof of improvements for patent.
3863.1-3 Data to be filed in support of application.
3863.1-4 Applications for placers containing known lodes.

Subpart 3864—Millsite Patents

3864.1 Millsite patents: General.
3864.1-1 Application for patent.
3864.1-2 Millsites applied for in conjunction with a lode claim.

Sec.
3864.1-3 Millsites for quartz mills or reduction works.
3864.1-4 Proof of nonmineral character.

AUTHORITY: 30 U.S.C. 22 *et seq.*

Subpart 3861—Surveys and Plats

SOURCE: 35 FR 9754, June 13, 1970, unless otherwise noted.

§ 3861.1 Surveys of mining claims.

§ 3861.1-1 Application for survey.

The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. He is required to have a correct survey where patent is applied for and where the mining claim is in vein or lode formation, or covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. Application for authorization of survey should be made to the appropriate land office (see § 1821.2-1 of this chapter).

[Circ. 2220, 31 FR 16785, Dec. 31, 1966]

§ 3861.1-2 Survey must be made subsequent to recording notice of location.

The survey and plat of mineral claims required to be filed in the proper office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey cannot be substituted for that required by the statute, as above indicated. All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 3861.1-3 Plats and field notes of mineral surveys.

When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

§ 3861.2 Surveys: Specific.

§ 3861.2-1 Particulars to be observed in mineral surveys.

(a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.9
Area in conflict with survey No. 948	2.30
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.40

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the area of conflict with prior surveys the area of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 3861.2-2 Certificate of expenditures and improvements.

(a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the authorized officer a certificate of the office cadastral engineer that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporation in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

§ 3861.2-3 Mineral surveyor's report of expenditures and improvements.

(a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim cannot be included in the estimate, but should be described and located in the notes and plat.

§ 3861.2-4 Supplemental proof of expenditures and improvements.

If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

§ 3861.2-5 Amended mineral surveys.

(a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

§ 3861.3 Mineral surveyors.

§ 3861.3–1 Extent of duties.

The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

§ 3861.3–2 Assistants.

The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 3861.4 Contract for surveys.

§ 3861.4–1 Payment.

(a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

(b) The state director has no jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i.e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

§ 3861.5 Appointment and employment of mineral surveyors.

§ 3861.5–1 Appointment.

Pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39), the Director or his delegate will appoint only a sufficient number of surveyors for the survey of mining claims to meet the demand for that class of work. Each appointee shall qualify as prescribed by the Director or his delegate. Applications for appointment as a mineral surveyor may be made at any office of the Bureau of Land Management listed in § 1821.2–1 of these regulations. A roster of appointed mineral surveyors will be available at these offices. Each appointee may execute mineral surveys in any State where mineral surveys are authorized.

[38 FR 30001, Oct. 31, 1973]

§ 3861.5–2 Employment.

A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

§ 3861.6 Plats and notices.

§ 3861.6–1 Payment of charges of the public survey office.

With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

§ 3861.7 Posting.

§ 3861.7-1 Plat and notice to be posted on claim.

The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat of survey.

§ 3861.7-2 Proof of posting on the claim.

After posting the said plat and notice upon the premises the claimant will file with the proper manager two copies of such plat and the field notes of survey of the claim, accompanied by two copies of the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, and two copies of the notice so posted to be attached to and form a part of said statement.

Subpart 3862—Lode Mining Claim Patent Applications

SOURCE: 35 FR 9756, June 13, 1970, unless otherwise noted.

§ 3862.1 Lode claim patent applications: General.

§ 3862.1-1 Application for patent.

(a) At the time the proof of posting is filed the claimant must file in duplicate an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district or State in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(b) Every application for patent based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

(c) In applying for patent to a mining claim embracing land lying partly within one proper office and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of §§ 1823.4(a) and 1861.2 of this chapter.

§ 3862.1-2 Service charge.

Each Mineral Patent Application shall be accompanied by a nonrefundable service charge of $250 per application and the initial mining claim or site plus $50 for each additional mining claim or site contained within the application.

[54 FR 48882, Dec. 2, 1988]

§ 3862.1-3 Evidence of title.

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to a form approved by the Director.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 3862.1-4 Evidence relating to destroyed or lost records.

In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 3862.1-5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

§ 3862.2 Citizenship.

§ 3862.2-1 Citizenship of corporations and of associations acting through agents.

The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application of patent.

§ 3862.2-2 Citizenship of individuals.

(a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturaliized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

§ 3862.2-3 Trustee to disclose nature of trust.

Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

§ 3862.3 Possessory rights.

§ 3862.3-1 Right by occupancy.

(a) The provisions of R.S. 2332 (30 U.S.C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State, together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or y judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 3862.3-2 Certificate of court required.

There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State as aforesaid other than that which has been finally decided in favor of the claimant.

§ 3862.3-3 Corroborative proof required.

The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

§ 3862.4 Publication of notice.

§ 3862.4-1 Newspaper publication.

Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the authorized officer will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semiweekly or triweekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

[35 FR 9756, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 3862.4-2 Contents of published notice.

The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 3862.4-3 Authorized officer to designate newspaper.

The authorized officer shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 3862.4-4 Charges for publication.

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of the several States for the publication of legal notices wherein the notice is published.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims. Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34 T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54′ west 7285.63 feet, thence north 20°14′ west 1500 feet to corner No. 2 of said lode; thence north 69°46′ east 569 feet to corner No. 3 of said lode; thence south 20°14′ east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46′ east 1606.1 feet to corner No. 3, Altitude lode; thence south 20°14′ east 1500 feet, to corner No. 4 of said lode; thence south 69°46′ west 1606.1 feet, to corner No. 1, Altitude No. 1 lode; thence North 20°14′ west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69°46′ west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State.

§ 3862.4-5 Proof by applicant of publication and posting.

After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 3862.4-6 Payment of purchase price and statement of charges and fees.

Upon the filing of the statement required by the preceding section, the authorized officer will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the authorized officer of the proper office, and a patent shall be issued thereon if found regular.

§ 3862.5 Entry and transfers.

§ 3862.5–1 Allowance of entry; transfers subsequent to application not recognized.

No entry will be allowed until the authorized officer has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

§ 3862.6 Diligent prosecution.

§ 3862.6–1 Failure to prosecute application with diligence.

The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

§ 3862.7 Application processing upon contest or protest.

§ 3862.7–1 Resumption of patent proceedings after suspension due to adverse claim or protest.

The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

§ 3862.8 Patents for mining claims.

§ 3862.8–1 Land descriptions in patents.

The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

Subpart 3863—Placer Mining Claim Patent Applications

Source: 35 FR 9758, June 13, 1970, unless otherwise noted.

§ 3863.1 Placer mining claim patent applications: General.

(a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at $2.50 per acre or fractional part of an acre.

§ 3863.1-1 Application for patent.

§ 3863.1-2 Proof of improvements for patent.

The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 3863.1-3 Data to be filed in support of application.

(a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by R.S. 2333 (30 U.S.C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses. The proof showing must be made in duplicate. See 51 L.D. 265 and 52 L.D. 190.

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 3863.1-4 Applications for placers containing known lodes.

Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within placer locations are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnesses.

Subpart 3864—Millsite Patents

SOURCE: 35 FR 9758, June 13, 1970, unless otherwise noted.

§ 3864.1 Millsite patents: General.

§ 3864.1–1 Application for patent.

(a) Land entered as a millsite must be shown to be nonmineral. Millsites are simply auxiliary to the working of mineral claims. R.S. 2337 (30 U.S.C. 42) provides for the patenting of millsites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by R.S. 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous millsite, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a millsite, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

(c) The Act of March 18, 1960 (74 Stat. 7; 43 U.S.C. 42(b)), amends R.S. 2337 to allow the holders of possessory right in a placer claim to hold nonmineral land for mining, milling, processing beneficiation, or other operations in connection with the placer claim. Applications for patent for such millsites are subject to the same requirements as to survey and notice as one applicable to placer mining claims. No one millsite may exceed five acres and payment will be $2.50 per acre or fraction thereof.

§ 3864.1–2 Millsites applied for in conjunction with a lode claim.

Where the original survey includes a lode claim and also a millsite the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the millsite as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the millsite to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the millsite as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the millsite, but the whole area of both lode and millsite will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and millsite claim.

§ 3864.1–3 Millsites for quartz mills or reduction works.

In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his millsite at the price named in the preceding section.

§ 3864.1–4 Proof of nonmineral character.

In every case there must be satisfactory proof that the land claimed as a millsite is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

PART 3870—ADVERSE CLAIMS, PROTESTS AND CONFLICTS

Subpart 3871—Adverse Claims

Sec.
3871.1 Filing of claim.
3871.2 Statement of claim.
3871.3 Action by authorized officer.
3871.4 Patent proceedings stayed when adverse claim is filed; exception.
3871.5 Termination of adverse suit.
3871.6 Certificate required when no suit commenced.

Subpart 3872—Protests, Contests and Conflicts

3872.1 Protest against mineral applications.
3872.2 Procedure in contest cases.
3872.3 Presumption as to land returned as mineral.
3872.4 Procedure to dispute record character of land.
3872.5 Testimony at hearings to determine character of lands.

Subpart 3873—Segregation

3873.1 Segregation of mineral from non-mineral land.
3873.2 Effect of decision that land is mineral.
3873.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

Subpart 3871—Adverse Claims

SOURCE: 35 FR 9759, June 13, 1970, unless otherwise noted.

§ 3871.1 Filing of claim.

(a) An adverse claim must be filed with the authorized officer of the proper office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

(d) A fee of $10 is payable by an adverse claimant at the time of filing his adverse claim. This charge is not refundable.

§ 3871.2 Statement of claim.

(a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided, however*, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 3871.3 Action by authorized officer.

(a) Upon the adverse claim being filed within the 60-day period of publication, the authorized officer will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

(b) The Act of September 21, 1961 (Pub. L. 87-260; 75 Stat. 541), amends the Act of June 7, 1910 (36 Stat. 459; 48 U.S.C. 386), and provides that adverse suits against mineral entries in Alaska shall be instituted within the 60-day time limit set forth in R.S. 2325 and 2326, (30 U.S.C. 29, 30). The act further provides that where a mineral patent application was filed prior to the effective date of the act, the time in which to file adverse suits is governed by the Act of June 7, 1910. Where a mineral patent application was filed prior to September 21, 1961, the entry will not be allowed until after the expiration of eight months following the publication period.

§ 3871.4 Patent proceedings stayed when adverse claim is filed; exception.

When an adverse claim is filed as aforesaid, the authorized officer will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waiver or withdrawn.

§ 3871.5 Termination of adverse suit.

(a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the authorized officer a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by R.S. 2326 (30 U.S.C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 3871.6 Certificate required when no suit commenced.

Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

Subpart 3872—Protests, Contests and Conflicts

Source: 35 FR 9760, June 13, 1970, unless otherwise noted.

§ 3872.1 Protest against mineral applications.

(a) At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of R.S. 2325 and 2326 (30 U.S.C. 29, 30). (See Turner v. Sawyer, 150 U.S. 578-586, 37 L. ed. 1189-1191.)

(b) Such protest filed by any party, other than a Federal agency, must be accompanied by a $10 nonrefundable service charge.

§ 3872.2 Procedure in contest cases.

Parts 1840 and 1850 of this chapter, in cases before the United States, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 3872.3 Presumption as to land returned as mineral.

Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 3872.4 Procedure to dispute record character of land.

(a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 3872.5 Testimony at hearings to determine character of lands.

(a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all.

In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

Subpart 3873—Segregation

SOURCE: 35 FR 9760, June 13, 1970, unless otherwise noted.

§ 3873.1 Segregation of mineral from non-mineral land.

Where a survey is necessary to set apart mineral from non-mineral land the appropriate authorized officer will have special instructions prepared outlining the procedure to be followed in the required survey. The survey will be executed at the expense of the United States. Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

§ 3873.2 Effect of decision that land is mineral.

The fact that a certain tract of land is decided upon testimony to the mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 3873.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

(a) The authorized officer will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the authorized officer will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims.

(b) The authorized officer will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the authorized officer of the proper office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume of the Code of Federal Regulations which is published separately and revised annually.

Index
Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Tables
List of CFR Sections Affected

INDEX

(AS OF OCTOBER 1, 1990)

EDITORIAL NOTE: This listing is provided for information purposes only. It is compiled and kept up-to-date by the Bureau of Land Management, Department of the Interior.

A

- Acquired lands:
  - Mineral collection permits — § 3560.7
  - Mineral leasing (coal only) — Part 3400
  - Mineral leasing (oil and gas) — § 3101.2-2
  - Mineral leasing (other than oil and gas, coal, oil shale, tar sand) — Group 3500
- Acquisitions (donations and purchases) — Group 2100; Subtitle A Part 8
- Acreage limitations (geothermal) — § 3201.2
- Acreage limitations (oil and gas) — § 3101.2
- Activity planning — § 3420.3
- Adjudication, equitable — § 1871.1
- Adjudication principles & procedures — Subpart 1871
- Adverse claims, mineral — Part 3870
- Advisory boards — Subpart 1784
- Airports:
  - Airport and Airway Improvement Act — Part 2640
  - Leases — § 2911.0-3
  - Segregative effect of application — § 2911.2-3, 2641.3
- Alaska Native Selections — Part 2650
  - Federal installations — Subpart 2655
  - General — Subpart 2650
  - Miscellaneous Selections — Subpart 2653
  - Native Reserves — Subpart 2654
  - Regional Selections — Subpart 2652
  - Village Selections — Subpart 2651
- Alaska Public Sale Act — Subpart 3822
- Allotment:
  - Grazing allotment management plan — § 4120.2
  - Indian allotments general — Subpart 2530
  - Native allotments in Alaska — Subpart 2561
  - Segregative effect of application (Alaska) — § 2091.2-1
- Amendment:
  - Resource management plans — § 1610.5-5
- Antiquities Act — Subtitle A, Part 3
- Appeals — § 1840.1; Subtitle A, Part 4
  - Coal — §§ 3410.3-2(g)(2), 3430.5-2, 3451.2(d), 3486.4
  - Geothermal — § 3266.1
  - Oil and gas — §§ 3101.7-3, 3165.4, 3120.1-3, 3000.4
  - Oil and gas units — § 3185.1
  - Rights-of-way — Subparts 2804 and 2884
  - Special recreation permits — § 8372.6
- Applications:

Applications:—Continued
Part 1820
General procedures .... § 3262.4
Geothermal Drilling .... Subpart 3281
Geothermal—unit agreement .... § 4220.2
Grazing—Alaska—Livestock .... § 4320.1
Grazing—Alaska—Reindeer .... § 4130.1
Grazing—Exclusive of Alaska .... § 1821.5
Lands in more than one land district .... Group 3400
Minerals—Leases (coal) .... Group 3100
Minerals—Leases (oil and gas) ....
Minerals—Leases (other than oil and gas, coal oil .... Group 3500
shale, tar sand) .... Group 3500
Minerals—prospecting permits .... § 3162.3-1
Oil and gas drilling .... Subpart 3181
Oil and gas unit agreement .... Subpart 3152
Oil and gas geophysical exploration—Alaska .... Subpart 1826
Reinstatement of canceled entries .... §§ 1822.2-1. 1822.3-4
Repayments .... Subparts 2802 and 2882
Rights-of-way .... § 8372.2
Special recreation permit .... § 1821.4
Notations .... § 1821.2-2
Time limit for filing documents .... Subtitle A, Part 7
Archaeological Resources Protection Act ....
Areas: § 1610.7-2
Critical environmental concern, areas of .... Subpart 8351
Designated national .... Subpart 8342
Designation, areas and trails (off-road vehicles) .... § 8365
Developed sites and rules of conduct .... Subpart 8352
Established .... Part 8350
Management .... § 8352
Outstanding natural .... § 8352
Primitive .... Subpart 8223
Research natural .... § 8352.0-6(b)
Scenic .... Part 8370
Use authorizations .... § 1610.7-1
Unsuitable for surface mining .... Part 8560
Wilderness .... Subpart 2543
Arkansas—erroneously meandered lands .... Part 3570
Asphalt in Oklahoma .... Part 3570
Asphalt leases .... Part 3833
Assessments work—annual filings ....
Assignments and/or transfers: § 3453
Coal .... § 3241
Geothermal .... § 4110.2-3
Grazing preference .... § 3833.3
Mining claims .... § 3106, 3135
Oil and gas .... § 3506
Other minerals .... § 2515
Reclamation homesteads .... § 2803
Rights-of-way .... § 2913
Small Tract Act .... § 1810.3
Authority to bind government .... Part 8370
Authorizations .... Subtitle A, Part 2
Availability of official records ....

B

Bonds: Subparts 3453, 3474
Coal leases .... Subpart 1822
General .... Subpart 3206
Geothermal .... Subpart 3284
Geothermal units ....

onds:—Continued
  Leases and prospecting permits for minerals (other than coal and oil and gas) ..... Subpart 3504
  Nationwide ..... § 3504.1-3
  Oil and gas exploration ..... Subpart 3154
  Oil and gas leasing ..... Subparts 3104, 3106, 3134
  Oil and gas units ..... § 3184.1
  Rights-of-way ..... §§ 2803.1-4, 2883.1-3
  Special recreation permits ..... § 8372.5
  Statewide ..... § 3504.1-5
ore holes and sample requirements (solid minerals other than coal) ..... Subpart 3593
urros, wild free-roaming ..... Part 4700

C

abin sites ..... Subtitle A, Part 2
adastral survey ..... Part 9180
alifornia: Reserved minerals in patented lands ..... Subpart 3584
anceled entries, reinstatement of ..... Subpart 1826
arey Act grants ..... Part 2610
asual use:
  Mining ..... §§ 3802.1-2, 3809.1-2
  Oil and gas exploration ..... § 3150.0-5(b)
  Rights-of-way ..... Part 2800
emeteries ..... Part 2750
ertified mail ..... § 1821.2-4
lassification, land:
  Criteria and procedures ..... Group 2400
  Policies and programs 1720
  Segregative effect ..... § 2091
losures ..... Subpart 8364
oal lands:
  Fissionable source materials ..... Part 3720
  Nonmineral entries ..... §§ 2093.2, 2511.4-4
oal leases:
  Applications for ..... Subpart 3425
  Assignments ..... Subpart 3453
  Bonds ..... Subpart 3474
  Exchanges ..... Subparts: 3435, 3436
  Fees, rentals, royalties ..... Subparts 3453, 3473, 3484
  Lease terms ..... Subpart 3475
  Modifications ..... Subpart 3432
  Negotiated sales and rights-of-way ..... Subpart 3431
  Qualification requirements ..... Subpart 3472
  Readjustments ..... Subpart 3451
  Relinquishment, cancellation and termination ..... Subpart 3452
al leasing:
  Competitive leasing ..... Subpart 3420
  General ..... Group 3400
  Preference right leases ..... Subpart 3430
  Special leasing opportunities ..... § 3420.1-3
  Split estate leasing ..... Subpart 3427, § 3400.0-5(kk)
l management (General) ..... Group 3400
l exploration and mining operation rules ..... Part 3480
l related planning:
  Hearings (plans involving potential leasing) ..... § 1610.2(k)
  Land use analysis ..... § 1610.5-7
  Process (resource management planning) ..... Part 1600
  Surface owner consultation ..... § 1610.2(j)
  Unsuitability criteria ..... § 3461.5
  Unsuitability designation ..... § 1610.7-1
trespass ..... § 3430.7, 9239.5-3

- Color-of-Title .... Part 2540
- Common varieties:
  - General .... Subpart 3711
  - Disposal of .... Part 3600
- Communication sites and lines, rights-of-way for .... Part 2800
- Community pits and common use areas .... Subpart 3604
- Confidentiality, coal .... §§ 3410.4(b), 3420.1-2(b), 3422.1(a), 3453.2-2(g), 3481.3
- Conformity (planning process) .... §1610.5-3
- Conditions of use—off-road vehicles .... Subpart 8341
- Consistency requirements (planning process) .... §1610.3-2
- Construction, rules of (words & phrases) .... § 1810.1
- Consultation, cooperation:
  - Attorney general .... §§ 3420.5-5, 3422.3-4, 3435.3-7
  - Indian tribes .... §§ 1610.3-1, 3400.3-4, 3420.2-6, 3420.5-4
  - State .... §§ 1610.3-1, 3400.4, 3420.2-6, 3420.5-3, 3434.3-6
  - Surface management agency .... §§ 3400.3-1, 3410.25, 3420.2-5
  - Surface owner .... §§ 1610.2(j), 3420.6
- Contributions .... Part 2110
- Conveyance—Federally owned mineral interests .... Part 2720
- Conveyancing documents .... Part 1860
  - Correction of .... Subpart 1865
- Cooperative relations .... Part 1780
- Coordination (planning process) .... § 1610.3-1
- Corridors, right-of-way .... Subpart 2806
- Court, production of records in .... § 1813.3
- Cultural resource management .... Group 8100

D

- Decision review by Congress (planning) .... § 1610.6
- Desert Land Act .... Subpart 2520
  - Segregation .... § 2091.4-1
- Designation:
  - Areas of Critical Environmental Concern .... § 1610.7-2
  - Areas unsuitable for surface mining .... § 1610.7-1
  - Areas and sites .... Part 2070
  - Management areas .... Part 8350
  - National areas .... Subpart 8351
  - Off-road vehicle areas and trails .... Subpart 8342
  - Right-of-way corridors .... Subpart 2806
  - Wilderness Areas .... Part 8560
- Development contracts (hardrock minerals) .... Subpart 3567
- Diligence requirements (coal) .... Subpart 3483
- Disaster relief .... Subpart 1815
- Disclaimers of interest, recordable .... Subpart 1864
- Disposal:
  - Classifications .... Part 2430
  - Mineral materials .... Part 3600
  - Programs and objectives .... Part 1720
- Dispositions--sales of mineral interests .... Part 2720
- District Advisory Boards .... § 1784.7
- Donations .... Part 2110
- Drainage .... § 3100.2
- Drilling and producing obligation:
  - Geothermal .... § 3262.3
  - Oil and gas .... § 3162.2

E

- Electric power generation, transmission, and distribution - rights-of-way .... Part 2800
- Emergency noncompetive sale of mineral materials .... § 3610.2-1(d)
- Employees—interest in lands .... § 20.735-22
- Employees, testimony of .... Subtitle A, Part 2
- Enclosures, unlawful .... § 9239.2
- Engineering .... Group 9100
- Environmental considerations:
  - Cultural resources .... § 3410.2-3
  - Oil and gas operations .... § 3162.5
  - Planning .... §§ 1601.0-6, 1610.4-6, 1610.4-7, 1610.4-8, 1610.5-5, 1610.8
  - Policy .... § 2725.3-2
  - Surface management and protection .... Subpart 3462
  - Threatened and endangered species .... § 3410.2-4
  - Unsuitability for coal mining .... Subpart 3461
- Equitable adjudication .... § 1871.1
- Erroneously meandered lands:
  - Arkansas .... Subpart 2543
  - Louisiana .... Subpart 2544
  - Wisconsin .... Subpart 2545
- Errors in patents .... Subpart 1865
- Established areas .... Subpart 8352
- Excavation of archaeological resources .... Subtitle A, Part 7
- Exchanges .... Group 2200; Group 3100; Group 3500
  - Coal lease .... Subpart 3435
  - Coal lease (alluvial valley) .... Subpart 3436
  - General .... Part 2200
  - Migratory bird or other wildlife refuges .... Part 2250
  - Mineral leases .... § 3107.7, Subpart 3526
  - Fee Federal coal deposits .... Subpart 2203
  - National Conservation Area .... Subpart 2274
  - National forests .... Subpart 2202
  - National parks and monuments .... Part 2240
  - National Trail System .... Subpart 2273
  - National Wild and Scenic Rivers .... Subpart 2273
  - Reservations or holdings (Indian) .... Subpart 2271
  - Reclamation .... Subpart 2272
  - Wildlife refuge exchanges .... Part 2250
- Exploration and resource recovery and protection plans (coal) .... Subpart 3482
- xploration licenses:
  - Coal .... Subpart 3410
  - Gilsonite .... Subpart 3554
  - Phosphate .... Subpart 3514
  - Potassium .... Subpart 3534
  - Sodium .... Subpart 3524
- xploration, notices of intent (oil and gas) .... § 3151.1
- xploration permits (oil and gas—Alaska) .... Subpart 3152
- ploration plans (solid minerals other than coal) .... Subpart 3592

F

- deral Power Act .... Subpart 2320
- s:
  - Alaska, livestock grazing .... § 4220.4
  - Alaska, reindeer .... § 4320.2
  - Coal .... § 3473.2
  - Exclusive of Alaska, livestock grazing .... § 4130.7
  - Mineral leases, filing fee .... Subpart 3503

Fees:—Continued
    Mineral prospecting permits, filing fee ... Subpart 3503
    Remittance of ... § 1822.1-2
    Special recreation permits ... § 8372.4
Filing:
    Competitive oil and gas nominations ... § 3120.3-2
    General ... Subpart 1821
    Time limit applications ... § 1821.2-2
    Townships plats ... § 1813.1-2
    Transfers (geothermal) ... § 3241.2
    Transfers (oil and gas) ... § 3106.3, 3135.1-2
Final proof—general ... Subpart 1823
Financial assistance, local government ... Part 1880
Fire management ... Part 9210
    Wildfire prevention ... Subpart 9212
Fish and Wildlife, preservation, use and management ... Subtitle A, Part 24
Fissionable source materials ... Subpart 3746
Flathead Irrigation District, Montana ... § 2515.8
Forest management ... Group 5000
Forest nonsale disposals ... Group 5500
Forest product disposal ... Group 5400
Fractional or future interest leases and permits ...
    Oil and gas ... § 3110.9
    Solid minerals (other than coal and oil shale) ... Subpart 3507
Freedom of Information Act ... Subtitle A, Part 2
Free use ... Part 3620
    Grazing—Alaska—livestock ... § 4220.6
    Grazing—Exclusive of Alaska ... § 4130.3
    Mineral materials ... Part 3600
    Timber ... Subpart 5510
Fur farms Alaska ... Subpart 2916
Future interest (geothermal) ... Subpart 3207
Future interest (oil and gas) ... §§ 3110.9, 3120.7

G

General Allotment Act of February 8, 1887 ... Subpart 2530
General obligations of lessees, operators, and permittees:
    Coal ... Subpart 3481
    Solid minerals other than coal ... Subpart 3591
Geophysical exploration (oil and gas) ... Subpart 3150
Geothermal resources:
    Available lands; limitations; unit agreements ... Subpart 3201
    Competitive leasing ... Part 3220
    Cooperative conservation provisions ... Subpart 3243
    Exploration operations ... Subpart 3209
    General ... Subpart 3200
    Lease bonds ... Subpart 3206
    Leasing terms ... Subpart 3203
    Noncompetitive leasing ... Subpart 3210
    Operations ... Part 3260
    Production and use of byproducts ... Subpart 3242
    Qualifications of lessees ... Subpart 3202
    Rules governing leases ... Part 3240
    Service charges, rentals and royalties ... Subpart 3205
    Surface management requirements ... Subpart 3204
    Terminations and expirations ... Subpart 3244
    Transfers ... Subpart 3241
    Unit agreements ... Part 3280
    Utilization—power plant sites ... Subpart 3250
Gifts of property ... Part 2110
"Gilsonite" leases ... Part 3550
Gold and silver, private land grants ... Subpart 3581

- Grants to States .... Part 2620
- Grants, Carey Act .... Part 2610
- Grazing:
  - Administration—Alaska—livestock .... Part 4200
  - Administration—Alaska—reindeer .... Part 4300
  - Administration—Exclusive of Alaska .... Part 4100
  - Administrative remedies—Exclusive of Alaska .... Subpart 4160
  - Allotments .... § 4110.2-4
  - Appeals—Exclusive of Alaska .... § 4160.4
  - Applications—Alaska—livestock .... § 4220.2
  - Applications—Alaska—reindeer .... § 4320.1
  - Applications—Exclusive of Alaska .... § 4130.1
  - Authorization .... Subpart 4130
  - Decisions—Exclusive of Alaska .... Subpart 4160
  - Fees .... § 4130.7
  - Hearings—Alaska—livestock .... § 4240.2
  - Hearings—Exclusive of Alaska .... Subtitle A, Part 4
  - Leases—Alaska—livestock .... Part 4200
  - Leases—Exclusive of Alaska .... Part 4130
  - Management .... Subpart 4120
  - Penalties .... Subpart 4170
  - Permits—Alaska—reindeer .... Part 4300
  - Permits—Exclusive of Alaska .... Part 4100
  - Preference .... Subpart 4110
  - Prohibited acts .... Subpart 4140
  - Protests—Alaska—livestock .... § 4240.1
  - Protests—Alaska—reindeer .... § 4330.1
  - Protests—Exclusive of Alaska .... § 4160.2
  - Qualifications and preference .... Subpart 4110
  - Trespass—Alaska—livestock .... § 4210.4, 9239.3
  - Trespass—Alaska—reindeer .... Subpart 4340, § 9239.3
  - Unauthorized grazing use—Exclusive of Alaska .... Subpart 4150

H

- ardrock minerals, leases and permits .... Part 3560
- eadquarters sites, Alaska .... § 2563.0-3(a)
- earing procedures .... Part 1850
- earings:
  - General .... Subtitle A, Part 4
  - Grazing—Alaska—livestock .... § 4240.2
  - Grazing—exclusive of Alaska .... § 4160.4; Subtitle A, Part 4
  - Mining claims .... Subparts 1850, 3713, 3870
  - Multiple mineral development .... Subpart 3743
  - Oil and gas penalties .... § 3163.2
  - Plan involving potential coal leasing .... § 1610.2(k)
- lium:
  - Conservation .... Subtitle A, Part 16
  - General .... Subpart 3745
  - Ownership and rights .... § 3100.1
  - Reserves .... § 3101.1
- ses, wild free-roaming .... Part 4700

I

- mnity selections, State .... Subpart 2621
- n allotments:
  - eneral .... Subpart 2530
  - egregative effect .... § 2531.3
- n land:
  - xchanges .... Subpart 2271
  - il and gas lease operations .... Subpart 3160
- ctions, enforcement, and appeals:

Inspections, enforcement, and appeals:—Continued
- Coal .... Subparts 3465 and 3486
- Oil and gas lease sites .... § 3161.3
- Solid minerals other than coal .... Part 3590

Inventory and information (planning) .... § 1610.4-3

K

King Range National Conservation Area:
- Acquisition of lands .... Subpart 2130
- Condemnation .... Subpart 2137
- Exchanges .... Subpart 2274
- Gifts .... § 2110.0-3(c)
- Special mining laws .... Subpart 3827

L

Laches .... § 1810.3
Land classification .... Group 2400
Land disposal policy .... § 1725.2
Land use analysis .... § 1610.5-7
Land use permits .... Part 2920
Land use planning:
- Coal related .... § 3420.1-4
- General (resource management) .... Part 1600

Late payment or underpayment of charges (solid minerals other than coal) .... Part 3590
Leases:
- Acquired lands minerals (coal only) .... § 3400.2(c)
- Acquired lands (oil and gas) .... §§ 3101.2-2, 3110.5-3
- Acquired lands minerals (other than oil and gas, coal, and oil shale) .... § 3501.1-2
- Airports and aviation fields .... Subpart 2911
- Asphalt .... Part 3570
- Cancellations:
  - Coal .... Subpart 3452
  - Geothermal .... § 3244.3
  - Oil and gas .... §§ 3108.2, 3136.3
- Coal .... Group 3400
- Extensions:
  - Coal .... Subpart 3451
  - Geothermal .... § 3203.1
  - Oil and gas .... §§ 3105, 3135
  - Other minerals .... § 3506.7
- Filing fees, minerals .... § 3503.1
- Fur farms, Alaska .... Subpart 2916
- General, Pierce Act, grazing .... Subpart 2120
- General .... Part 2920
- Geothermal .... Part 3200
- Gilsonite .... Part 3550
- Grazing—Alaska—livestock .... Part 4200
- Grazing—Exclusive of Alaska .... Subpart 4130
- Hardrock minerals .... Part 3560
- Mineral Leasing Act (1920) .... Part 3100, 3400, 3500
- Oil and gas .... Part 3100
  - Competitive leases .... Subpart 3120
  - General .... Subpart 3100
  - National Petroleum Reserve—Alaska .... Subpart 3130
  - Noncompetitive leases .... Subpart 3110
- Permits and easements .... Subpart 2920
- Phosphate .... Part 3510
- Potassium .... Part 3530

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Extensions—Continued

  - Public domain lands, minerals ... § 3501.1-1, Subpart 3101
  - Recreation and public purposes ... Subpart 2912
  - Relinquishments, minerals ... Subparts 3108, 3244, 3509
  - Rentals, minerals ... §§ 3103.2, 3205.3, Subpart 3503
  - Reorganization plan #3 minerals ... § 3500.1-1
  - Royalty reductions, coal ... Subpart 3485
  - Sodium ... Part 3520
  - Sulphur ... Part 3540
  - Suspensions, coal ... Subparts 3473 and 3483
  - Special leasing areas ... Part 3580
  - Tar sand ... Part 3140
  - Terminations and cancellations, coal ... Subpart 3452
  - Terminations and cancellations, geothermal ... Subpart 3244
  - Terminations and cancellations, mineral ... Subpart 3509
  - Terminations and cancellations, oil and gas ... Subpart 3108

- Licenses:
  - Coal mining ... Subparts 3400, 3440, § 3400.0-5(l), § 3400.0-5(u)
  - Coal exploration ... Subpart 3410
- Location:
  - Mining location:
    - General ... Group 3800
    - In powersite withdrawals ... Subpart 3730
    - In reclamation withdrawals ... Subpart 3816
  - Multiple mineral development ... Subpart 3740
  - Source material in coal lands ... Part 3720
- Lode claims:
  - General ... Subparts 3841, 3862
- Logging roads, rights-of-way for ... Part 2810
- Logical mining unit (coal) ... Subpart 3487
- Louisiana, erroneously meandered lands in ... Subpart 2544

M

- Mail:
  - Communications ... § 1810.2
  - Certified or registered mail ... § 1821.2-4
- Management areas, recreation ... Part 8350
- Management of designated wilderness areas ... Part 8560
- Maps and plans requirements (coal) ... Subpart 3482
- Maps and plans requirements (solid minerals other than coal) ... Subpart 3592
- Material trespass ... § 9239.6
- Milling and mining waste (solid minerals other than coal) ... Subpart 3596
- Millsites:
  - General ... Subparts 3844, 3864
  - In powersite withdrawals ... Subpart 3737
- Mineral collection permits—acquired lands uses ... Subpart 3560.7
- Mineral development impact relief ... Subpart 1882
- Mineral development, multiple ... Part 3740; § 3500.6
- Mineral lands:
  - Entries ... § 2093.3
  - Review for designation as unsuitable for entry or leasing ... § 1610.7-1
  - State grants ... Subpart 2623
- Mineral Leasing:
  - Acquired lands ... §§ 3101.2-2; 3500.0-3(a)(2)
  - Coal ... Group 3400
  - Geothermal resources ... Part 3200
  - Recreation areas and public purpose lands ... § 3101.6
  - Military service ... § 2096.2-8

Mineral Leasing:—Continued
    Public domain lands .... §§ 3101.2-1, 3500.0-3(a)(1)
    Oil and gas .... Parts 3100, 3130
    Solid minerals .... Group 3500
    Special leasing areas .... Part 3580
Mineral Leasing Act of 1920:
    Coal .... § 3400.0-3(a)(1)
    General .... Part 3100
    Rights-of-way for pipelines, oil and gas .... Parts 2880, 3109
    National forest lands in Minnesota .... § 3500.0-3(b)(3)
    Oil and gas .... Subpart 3000
    Surface protection .... Subtitle A, Part 23
Minerals other than oil and gas and coal, oil shale and
    Tar sands .... Group 3500
    Reorganization Plan #3 .... § 3500.0-3(b)
    Rights-of-way .... Part 2800
Mineral materials .... Part 3600
Mineral surveyors:
    Appointment and employment .... § 3861.5
    Contracts .... § 3861.4
    Duties .... § 3861.3-1
    Reports .... § 3861.2-3
Mineral trespass .... § 9239.5
Minerals, disposal of reserved:
    General .... § 3813.2
    Act of July 17, 1914 .... Subpart 3813
    Stockraising Homestead Act .... Subpart 3814
Minerals—nonmineral entries on mineral lands .... Subpart 2093
Mining claims:
    Access to .... § 3809.3-3
    Adverse claims .... Subpart 3871
    Areas subject to special mining laws .... Part 3820
    Assessment work .... Part 3850, § 3833.2
    Casual use .... §§ 3802.1-2, 3809.1-2
    Contests .... Subpart 3872
    Describing locations .... § 3841.4
    Discovery .... § 3841.3
    General .... Group 3800
    Hearings .... Subparts 1850, 3713, 3870
    Lands in more than one land district .... § 1821.5
    Lode claim patent application .... Subpart 3862
    Lode claims .... Subpart 3641
    Millsite patents .... Subpart 3864
    Millsites .... Subpart 3844
    Mineral patent applications .... Part 3860
    Mining laws of 1872 .... Group 3800
    National Park Service Areas .... Subpart 3826
    Nature and classes .... Part 3840
    Notice .... § 3809.1-3
    O and C lands .... Subpart 3821
    Placer claim patent applications .... Subpart 3863
    Placer claims .... Subpart 3842
    Plan of operations .... §§ 3802.1, 3809.1-4
    Possessory rights .... § 3862.3
    Posting of claim .... § 3861.7
    Protests .... Subpart 3872
    Recordation .... Subpart 3833
    Stock driveway withdrawals .... Subpart 3815
    Surface management .... Subpart 3809
    Surveys and plats .... Subpart 3861
    Tunnel sites .... Subpart 3843
    Wilderness Review Program (exploration and mining) .... Subpart 3802
Mining methods (coal) .... §§ 3481.1, 3482.1

Mining Methods (solid minerals other than coal) ..... Part 3590
Minnesota: National Forest Lands ..... § 3500.0-3(b)(3)
Motion pictures ..... Subtitle A, Part 5
Motor vehicles, off road vehicle standards ..... § 8343.1
Motor vehicles, developed sites and areas ..... Subpart 8365

N

Names of claimants ..... § 1821.1
National Advisory Boards ..... § 1784.5
National Park Service areas ..... Subpart 2582
National Petroleum Reserve—Alaska (oil and gas) ..... Part 3130
National Recreation Areas:
  Whiskeytown-Shasta-Trinity ..... § 3109.3, Subpart 3583, § 3500.0-3(c)(4)
National Rivers ..... § 8351.2
National Trails ..... § 8351.1
National Wilderness Preservation System ..... Subtitle A, Part 19
Native allotments:
  Alaska ..... Subpart 2561
  Segregative effect ..... § 2561.1
Native townsites (Alaska) ..... Subpart 2564
Natural Areas:
  Outstanding ..... Subpart 8352
  Research ..... Subpart 8223
Natural History Resource Management ..... Group 8200
Nevada: sand and gravel ..... Subpart 3586
Nonmineral entries on mineral lands ..... Subpart 2093
Notations:
  Applications ..... § 1821.4
  Records ..... § 1813.1-1

O

O and C lands:
  Federal timber contract payment modification ..... Subpart 5475
  General ..... Part 5040
  Grazing ..... Part 4100
  Mining ..... Subpart 3821
  Recreation ..... Group 8000
  Rights-of-way ..... Subpart 2812
  Timber sales ..... § 5400.0-3
  Trespass ..... § 9239.7-1
Oaths ..... § 1821.3
Occupancy:
  Cabin sites ..... Subtitle A, Part 21
  Unlawful ..... § 9239.2
Off-road vehicles ..... Part 8340
Office hours of offices ..... § 1821.2-1
Officers—authority to bind government ..... § 1810.3
Official records, availability of ..... Subtitle A, Part 2
Oil and Gas:
  Accreted lands ..... § 3110.5-4
  Combined hydrocarbon leases ..... Part 3140
  Competitive leases ..... Subpart 3120
  Drilling applications ..... § 3162.3-1
  General ..... Group 3100
  Free use of timber ..... § 5511.1-4
  Issuance of leases ..... Subpart 3101, 3132
  National Petroleum Reserve—Alaska ..... Subpart 3130
  Noncompetitive leases ..... Subpart 3110
  Noncompliance and assessments ..... Subpart 3163
  Onshore oil and gas orders ..... § 3164.1

Oil and Gas:—Continued

Operations	Part 3160
Oral auction	§ 3120.5
Pipelines, rights-of-way for (onshore)	Part 2800
Qualification of lessees	Subpart 3102
Rights-of-way leases	§ 3109.1
Transfers	Subpart 3106
Unit agreements	Subpart 3105, 3180
Oil trespass	§ 9239.5-2
Oklahoma:	
Asphalt leases	Part 3570
Omitted lands:	
General	Subpart 2547
Recreation and Public Purposes Act	Subpart 2742
Snake River, Idaho	Subpart 2546
Surveys	§§ 9185.2-2, 9185.2-3
Opening orders	Part 2091
Operations under mineral leases:	
Coal	Part 3480
Geothermal	Part 3260
Oil and gas	Part 3160
Solid minerals other than coal	Part 3590
Outdoor recreation	Group 8000
Outstanding natural areas	Subpart 8352

P

Patents:	
Content	§ 1862.1
Delivery	§ 1862.2
Errors, correction	Subpart 1865
Preparation and issuance	Subpart 1862
Suits to vacate and annul	§ 1862.5
Two-year rule	§ 1862.6
Payments and repayments	Subpart 1822
Payments in lieu of taxes	Subpart 1881
Performance standards	Subpart 3484
Permits:	
Archaeological resources	Subtitle A, Part 7
Coal	§ 3400.0-5(dd)
Free use, mineral materials	Part 3620
General	Part 2920
Geophysical exploration (oil and gas)	Subpart 3150
Gilsonite	Subpart 3552
Grazing (Alaska reindeer)	Part 4300
Grazing (exclusive of Alaska)	Subpart 4130
Hardrock minerals	Part 3562
Off-road vehicles	Subpart 8344
Oil and gas (Alaska)	§ 3152.1
Oil and gas (drilling)	§ 3162.3-1
Phosphate	§ 3512
Potassium	Part 3530, Subpart 3532
Range Improvement	§ 4120.3-3
Recreation rules of conduct	Subpart 8365
Recreation use (undeveloped sites)	§ 8372.1
Rights-of-way	Parts 2800 and 2880
Sodium	Subparts 3522, 3527
Special areas	§ 8372.1-2
Sulphur	Subpart 3542
Temporary use	Parts 2800 and 2880
Timber	Part 5510
Petition—applications for classification	Part 2450
Petition—reinstatements	§ 3108.2

Petrified wood .... Subpart 3622
Phosphate leases and permits .... Subparts 3511, 3512
Pierce Act .... Subpart 2120
Pipelines onshore, rights-of-way for .... Parts 2800 and 2880
Placer claims .... Subparts 3842, 3863
Planning analysis .... § 1610.8(b)
Planning, programming and budgeting .... Part 1600
  Guidance (resource management planning) .... § 1610.1
  Process (resource management planning) .... § 1610.4
  Public participation .... § 1610.2
Plats and tract books .... § 1813.1
Policies, general .... Subpart 1725
Policy, fish and wildlife .... Subtitle A, Part 24
Potassium leases and permits .... Part 3530
Power .... Subpart 2320
Practitioners .... Subpart 1812; Subtitle A Part 1
Price of lands .... § 1725.2-1
Primitive areas .... Subpart 8352
Privacy Act .... Subtitle A, Part 2
Production goals and leasing targets .... § 3420.3
Production of records in court .... § 1813.3
Production records and audit (solid minerals other than coal) ....
Production verification, coal .... Subpart 3597
Program management .... Subparts 3465 and 3486
Prohibited activities: .... Group 1700
  Grazing ....
  Recreation use .... §§ 4140.1, 4150.1, Subpart 4170
  Subparts 8340, 8341, 8343, §§ 8351.2, 8352.1-4, Subparts
  Wilderness areas 8364, 8365
Protection against mining hazards (solid minerals other than coal) .... § 8560.1-2
Proofs .... Subpart 3595
Prospecting permits: .... Subpart 1823, 1824
  Extensions ....
  Filing fees .... Group 3500
  General .... Group 3500
  Gilsonite .... Group 3500
  Hardrock .... Subpart 3552
  Phosphate .... Subpart 3562
  Potassium .... § 3512
  Relinquishment, minerals .... Subpart 3532
  Rentals .... § 3509.1
  Reorganization Plan #3 .... Part 3503
  Sodium .... § 3500.0-3(b)
  Sulphur .... Subpart 3522
  Terminations, expirations, cancellations .... Subpart 3542
Protest and contest proceedings .... Subpart 3509
Protest procedures (planning) .... Subpart 1850; Subtitle A
Public administrative procedures .... § 1610.5-2
Public domain lands: .... Group 1800
  Mineral leasing (oil and gas) .... § 3101
  Mineral leasing (other than oil, gas, coal, and tar sands) .... § 3501.1-1
Public land orders, table of .... Appendix
Public land records .... Subpart 1813
Public participation (planning) .... § 1610.2
Public sales:
  General laws .... Part 2710

Q

Qualifications of applicants for grazing:

Qualifications of applicants for grazing:—Continued

  - Alaska—reindeer § 4310.2
  - Exclusive of Alaska § 4110.1
- Qualifications of lessees (geothermal) Subpart 3202
- Qualifications of lessees (oil and gas) Subparts 3102, 3132
- Qualifications of practitioners Subpart 1812

R

- Radio sites, rights-of-way for Part 2800
- Railroad grants Part 2630
- Railroads, rights-of-way for Part 2800
- Range improvements and contributions:
  - Alaska—livestock § 4220.9
  - Alaska—reindeer § 4320.9
  - Exclusive of Alaska § 4120.3
- Range management Subchapter D (4000)
- Reclamation townsites Subpart 2764
- Reconveyance, recordation of § 1822.3-3
- Recordable disclaimers of interest Subpart 1864
- Records:
  - Availability of official Subtitle A, Part 2
  - General Subpart 1813
  - In court § 1813.3
- Recreation:
  - Closures and restrictions Subpart 8364
  - General Subpart 8000
  - Lands Part 8350
  - Management Group 8300
  - Programs Subchapter H, Group 8000
  - Rules of conduct Subpart 8365
  - Use authorizations Part 8370
  - Visitor services Part 8360
  - Wilderness areas Part 8560
- Recreation and public purposes:
  - General Part 2740
  - Leases Subpart 2912
  - Omitted lands and unsurveyed islands Subpart 2742
  - Segregative effect § 2091.7-1, 2741.5
- Register, serial § 1813.2
- Registered mail, use of § 1821.2-4
- Reindeer grazing:
  - Permits Part 4300
  - Segregative effect § 2091.6-2, 4310.5
  - Trespass Subpart 4340
- Reimbursement of costs (rights-of-way) §§ 2808.1, 2883.1-1
- Reinstatement of canceled entries Subpart 1826
- Reinstatement of oil and gas leases 3108.2
- Related facilities - oil and gas pipelines Part 2880
- Reliance upon information of opinion of officer § 1810.3(c)
- Relinquishments:
  - Coal leases Subpart 3452
  - General Subpart 1825
  - Minerals, leases (except coal, oil shale, and oil and gas) Subpart 3509
  - Minerals, leases (oil and gas) Subpart 3108, § 3136.1
  - Minerals, prospecting permits § 3509.1-1
- Remittances § 1822.1-2
- Removal of archaeological resources Subtitle A, Part 7
- Rentals and royalties:
  - Coal § 3473
  - Solid minerals other than coal and oil shale Subpart 3503
  - Geothermal § 3205

Rentals and royalties—Continued

  Oil and gas §§ 3103, 3133
  Rights-of-way § 2803.1-2
Repayments Subpart 1822
Reports, royalties, and records:
  Coal Subpart 3485
  Solid minerals other than coal Part 3590
Research natural areas Subpart 8223
Reserved minerals, disposal of:
  Act of July 17, 1914 Subpart 3813
  Act of September 14, 1960 (Alaska) § 2627.3
  Stockraising Homestead Act Subpart 3814
Reservoirs, ditches and canals, rights-of-way Part 2800
Resource management plan § 1610.0-5(k)
Resource management planning:
  Amendments § 1610.5-5
  Approval and administrative review § 1610.5-1
  Conformity § 1610.5-3
  Consistency § 1610.3-2
  Coordination § 1601.3-1
  Decision review by Congress § 1610.6
  Designation of areas § 1610.7
  Guidance § 1601.1
  Inventory and information § 1610.4-3
  Issues § 1610.4-1
  Land use analysis § 1610.5-7
  NEPA policy § 1601.0-6
  Planning analysis § 1610.8(b)
  Planning criteria § 1610.4-2
  Process § 1610.4
  Protest procedures § 1610.5-2
  Public participation § 1601.2
Restorations and revocations of withdrawals and reservations Subpart 2370
Resurveys §§ 9185.1-2, 9185.3
Revocations Part 2370
Rights-of-way Group 2800
Rivers:
  National Wild and Scenic § 8351.2
Roads, rights-of-way for Parts 2800, 2810
Rules of construction—words and phrases § 1810.1
Rules, visitor use:
  Commercial use § 8372.0-7
  Competitive use § 8372.0-7
  National wild and scenic rivers § 8351.2-1
  Off-road vehicle § 8341.2
  Recreation sites Subpart 8372
  Rules of conduct Subpart 8365
  Supplemental § 8365.1-6
  Wilderness areas Part 8560

S

Sales:
  Coal Subpart 3422
  Competitive oil and gas §§ 3120.5, 3131.4
  Geothermal Subpart 3220
  Mineral material Part 3610
  Timber Subpart 5400
  Public lands, general Subpart 2710
  Public lands, procedures Subpart 2711
Scenic areas § 8352.0-6(b)
Scenic and wild rivers § 8351.2

School land grants, mineral sections .... Subpart 2623
School land patents .... Subpart 2674
Segregative effect .... Subpart 2091
Serial register .... § 1813.2
Services, recreation visitor .... Subpart 8361
Shore space, Alaska .... Subpart 2094
Simultaneous application procedures .... Subpart 1821
Snake River, omitted lands .... Subpart 2546
Sodium, leases and permits .... Subpart 3520
Solid minerals (other than coal) exploration and mining operations .... Part 3590
Special leasing areas (solid minerals other than coal and oil shale) .... Part 3580
Special recreation permits .... Subpart 8372
State Advisory Boards .... § 1784.6
State director review (oil and gas) .... § 3165.3
State grants:
  Alaska .... Subpart 2627
  General .... Part 2620
  Segregative effect .... § 2627.4
State irrigation districts .... Subpart 2783
Stockraising Homestead Act—disposal of reserved minerals .... Subpart 3814
Sulphur leases and permits .... Part 3540
Surface exploration, mining and reclamation of land .... Part 23
Surface management .... Subparts 3802 and 3809
Surveys .... Part 9180
Suspension of operations and production (S.O.P.):
  Coal .... Subparts 3473 and 3483
  Geothermal .... § 3205.3-8
  Oil and gas .... § 3103.4-2

T

Technical services .... Subchapter I (9000)
Television sites, rights-of-way for .... Part 2800
Telephone and telegraph lines, rights-of-way for .... Part 2800
Terminations (coal) .... Subpart 3452
Terminations (geothermal) .... § 3244.2
Terminations (oil and gas) .... § 3108.2
Testimony and proofs .... Subpart 1823
Testimony of employees of Department .... Subtitle A, Part 2
Timber .... Group 5400
Time limit for filing documents .... § 1821.2-2
Title Conveyances .... Subpart 1863
Tort claims .... Subtitle A, Part 22
Township plats, filing of .... § 1813.1-2
Townsite:
  Alaska native townsites .... Subpart 2564
  Alaska Railroad .... Subpart 2566
  General .... Subpart 2760
  Nonnative .... Subpart 2565
  Reclamation .... Subpart 2764
Tract books and plats .... § 1813.1
Trails:
  Exchanges .... Subpart 2273
  National .... § 8351.1
  Off-road vehicle designation .... Subpart 8342
Tramroads and logging roads, rights-of-way for .... Part 2810
Transmission lines, rights-of-way for .... Part 2800
Tunnel sites .... Subpart 3843

U

Unauthorized use .... Part 9230
  Grazing .... Subpart 4150
  Lands .... Parts 2800 and 2920
  Mining materials .... Subpart 3603
Use authorizations .... Part 8370
Use permits:
  Phosphate .... Subpart 3517
  Sodium .... Subpart 3527
Unsuitability:
  Coal mining .... Subpart 3461
  Planning .... § 1610.7-1

V

Vehicles:
  Developed sites and areas .... § 8365.2-4
  Off-road .... Part 8340
Vehicles operation—off-road vehicles .... Subpart 8343
Veterans .... Subpart 2096
Visitor Services .... Part 8360

W

Water facilities, right-of-way for .... Part 2812
Water power .... Subpart 2370
Whiskeytown-Shasta-Trinity National Recreation Area .... Subpart 3583
Wild and Scenic Rivers .... § 8351.2
Wild free-roaming horse and burro:
  Compliance .... Subpart 4760
  Destruction of wild horses or burros and disposal of remains .... Subpart 4730
  Management considerations .... Subpart 4710
  Motor vehicles and aircraft .... Subpart 4740
  Private maintenance .... Subpart 4750
  Prohibited Acts, administrative remedies and penalties .... Subpart 4770
  Removal .... Subpart 4720
Wilderness areas .... Part 8560
Wilderness Areas—mining claims .... § 3809.1-4
Wilderness Area—procedures for management .... Part 8560
Wilderness Review Program:
  Exploration and mining .... Subpart 3802
Wildlife and fisheries management .... Group 6000
  Department of the Interior Fish and Wildlife Policy: State-Federal relationships .... Subtitle A, Part 24
Wisconsin—erroneously meandered lands .... Subpart 2545
Withdrawals and reservations:
  General .... Group 2300
  Restorations and revocations .... Subpart 2370

Table of CFR Titles and Chapters

(Revised as of September 14, 1990)

Title 1—General Provisions

I	Administrative Committee of the Federal Register (Parts 1—49)
II	Office of the Federal Register (Parts 50—299)
III	Administrative Conference of the United States (Parts 300—399)
IV	Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

I	Executive Office of the President (Parts 100—199)

Title 4—Accounts

I	General Accounting Office (Parts 1—99)
II	Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)
III	General Accounting Office (CASB) (Parts 300—499)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1—1199)
II	Merit Systems Protection Board (Parts 1200—1299)
III	Office of Management and Budget (Parts 1300—1399)
IV	Advisory Committee on Federal Pay (Parts 1400—1499)
V	The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI	Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII	Advisory Commission on Intergovernmental Relations (Parts 1700--1799)
VIII	Office of Special Council (Parts 1800—1899)
IX	Appalachian Regional Commission (Parts 1900—1999)
XI	United States Soldiers' and Airmen's Home (Parts 2100--2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

Title 5—Administrative Personnel—Continued

Chap.	
XV	Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI	Office of Government Ethics (Parts 2600—2699)

Title 6—[Reserved]

Title 7—Agriculture

	SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)
	SUBTITLE B—Regulations of the Department of Agriculture
I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
II	Food and Nutrition Service, Department of Agriculture (Parts 210—299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V	Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI	Soil Conservation Service, Department of Agriculture (Parts 600—699)
VII	Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700—799)
VIII	Federal Grain Inspection Service, Department of Agriculture (Parts 800—899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII	Rural Electrification Administration, Department of Agriculture (Parts 1700—1799)
XVIII	Farmers Home Administration, Department of Agriculture (Parts 1800—2099)
XXI	Foreign Economic Development Service, Department of Agriculture (Parts 2100—2199)
XXII	Office of International Cooperation and Development, Department of Agriculture (Parts 2200—2299)

Title 7—Agriculture—Continued

Chap.	
XXIV	Board of Contract Appeals, Department of Agriculture (Parts 2400—2499)
XXV	Office of the General Sales Manager, Department of Agriculture (Parts 2500—2599)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy, Department of Agriculture (Parts 2900—2999)
XXX	Office of Finance and Management, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	Office of Grants and Program Systems, Department of Agriculture (Parts 3200—3299)
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	Cooperative State Research Service, Department of Agriculture (Parts 3400—3499)
XXXVI	National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII	Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII	World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XXXIX	Economic Analysis Staff, Department of Agriculture (Parts 3900—3999)
XL	Economics Management Staff, Department of Agriculture (Parts 4000—4099)
XLI	National Agricultural Library, Department of Agriculture (Part 4100)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II	Packers and Stockyards Administration, Department of Agriculture (Parts 200—299)
III	Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—399)

Title 10—Energy

Chap.	
I	Nuclear Regulatory Commission (Parts 0—199)
II	Department of Energy (Parts 200—699)
III	Department of Energy (Parts 700—999)
X	Department of Energy (General Provisions) (Parts 1000—1099)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1—199)
II	Federal Reserve System (Parts 200—299)
III	Federal Deposit Insurance Corporation (Parts 300—399)
IV	Export-Import Bank of the United States (Parts 400—499)
V	Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI	Farm Credit Administration (Parts 600—699)
VII	National Credit Union Administration (Parts 700—799)
VIII	Federal Financing Bank (Parts 800—899)
IX	Federal Housing Finance Board (Parts 900—999)
XI	Federal Financial Institutions Examination Council (Parts 1100—1199)
XIII	Farm Credit System Assistance Board (Parts 1300—1399)
XIV	Farm Credit System Insurance Corporation
XV	Oversight Board (Parts 1500—1599)
XVI	Resolution Trust Corporation (Parts 1600—1699)

Title 13—Business Credit and Assistance

I	Small Business Administration (Parts 1—199)
III	Economic Development Administration, Department of Commerce (Parts 300—399)

Title 14—Aeronautics and Space

I	Federal Aviation Administration, Department of Transportation (Parts 1—199)
II	Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III	Office of Commercial Space Transportation, Department of Transportation (Parts 400—499)
V	National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

Chap.	
	SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)
	SUBTITLE B—Regulations Relating to Commerce and Foreign Trade
I	Bureau of the Census, Department of Commerce (Parts 30—199)
II	National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III	International Trade Administration, Department of Commerce (Parts 300—399)
IV	Foreign-Trade Zones Board (Parts 400—499)
VII	Bureau of Export Administration, Department of Commerce (Parts 700—799)
VIII	Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX	National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI	Technology Administration, Department of Commerce (Parts 1100—1199)
XII	United States Travel Service, Department of Commerce (Parts 1200—1299)
XIII	East-West Foreign Trade Board (Parts 1300—1399)
XIV	Minority Business Development Agency (Parts 1400—1499)
	SUBTITLE C—Regulations Relating to Foreign Trade Agreements
XX	Office of the United States Trade Representative (Parts 2000—2099)
	SUBTITLE D—Regulations Relating to Telecommunications and Information
XXIII	National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I	Federal Trade Commission (Parts 0—999)
II	Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I	Commodity Futures Trading Commission (Parts 1—199)
II	Securities and Exchange Commission (Parts 200—399)
IV	Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I	Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)
III	Delaware River Basin Commission (Parts 400—499)
VI	Water Resources Council (Parts 700—799)
VIII	Susquehanna River Basin Commission (Parts 800—899)

Title 18—Conservation of Power and Water Resources—Continued

Chap.	
XIII	Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I	United States Customs Service, Department of the Treasury (Parts 1—199)
II	United States International Trade Commission (Parts 200—299)
III	International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I	Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)
II	Railroad Retirement Board (Parts 200—399)
III	Social Security Administration, Department of Health and Human Services (Parts 400—499)
IV	Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
V	Employment and Training Administration, Department of Labor (Parts 600—699)
VI	Employment Standards Administration, Department of Labor (Parts 700—799)
VII	Benefits Review Board, Department of Labor (Parts 800—899)
VIII	Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX	Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I	Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II	Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

Title 22—Foreign Relations

I	Department of State (Parts 1—199)
II	Agency for International Development, International Development Cooperation Agency (Parts 200—299)
III	Peace Corps (Parts 300—399)
IV	International Joint Commission, United States and Canada (Parts 400—499)
V	United States Information Agency (Parts 500—599)
VI	United States Arms Control and Disarmament Agency (Parts 600—699)
VII	Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)
IX	Foreign Service Grievance Board Regulations (Parts 900—999)
X	Inter-American Foundation (Parts 1000—1099)

Title 22—Foreign Relations—Continued

Chap.

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Board for International Broadcasting (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699)

VII Office of the Secretary, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

Title 24—Housing and Urban Development—Continued

Chap.

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XI Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800—1899)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XV Mortgage Insurance and Loan Programs under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700—2799)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3699)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

IV Navajo and Hopi Indian Relocation Commission (Parts 700—799)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—699)

Title 27—-Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)

SUBTITLE B—Regulations Relating to Labor

I National Labor Relations Board (Parts 100—199)

Title 29—Labor—Continued

Chap.	
II	Bureau of Labor-Management Relations and Cooperative Programs, Department of Labor (Parts 200—299)
III	National Railroad Adjustment Board (Parts 300—399)
IV	Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V	Wage and Hour Division, Department of Labor (Parts 500—899)
IX	Construction Industry Collective Bargaining Commission (Parts 900—999)
X	National Mediation Board (Parts 1200-1299)
XII	Federal Mediation and Conciliation Service (Parts 1400-1499)
XIV	Equal Employment Opportunity Commission (Parts 1600-1699)
XVII	Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX	Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV	Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)
XXVI	Pension Benefit Guaranty Corporation (Parts 2600—2699)
XXVII	Federal Mine Safety and Health Review Commission (Parts 2700—2799)

Title 30—Mineral Resources

I	Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II	Minerals Management Service, Department of the Interior (Parts 200—299)
III	Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)
IV	Geological Survey, Department of the Interior (Parts 400—499)
VI	Bureau of Mines, Department of the Interior (Parts 600—699)
VII	Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

	SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)
	SUBTITLE B—Regulations Relating to Money and Finance
I	Monetary Offices, Department of the Treasury (Parts 51—199)
II	Fiscal Service, Department of the Treasury (Parts 200—399)
IV	Secret Service, Department of the Treasury (Parts 400—499)
V	Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI	Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII	Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

Title 32—National Defense

Chap.	
	SUBTITLE A—Department of Defense
I	Office of the Secretary of Defense (Parts 1—399)
V	Department of the Army (Parts 400—699)
VI	Department of the Navy (Parts 700—799)
VII	Department of the Air Force (Parts 800—1099)
	SUBTITLE B—Other Regulations Relating to National Defense
XII	Defense Logistics Agency (Parts 1200-1299)
XVI	Selective Service System (Parts 1600-1699)
XIX	Central Intelligence Agency (Parts 1900—1999)
XX	Information Security Oversight Office (Parts 2000—2099)
XXI	National Security Council (Parts 2100—2199)
XXIV	Office of Science and Technology Policy (Parts 2400—2499)
XXVII	Office for Micronesian Status Negotiations (Parts 2700—2799)
XXVIII	Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I	Coast Guard, Department of Transportation (Parts 1—199)
II	Corps of Engineers, Department of the Army (Parts 200—399)
IV	Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

	SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)
	SUBTITLE B—Regulations of the Offices of the Department of Education
I	Office for Civil Rights, Department of Education (Parts 100—199)
II	Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III	Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
IV	Office of Vocational and Adult Education, Department of Education (Parts 400—499)
V	Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)
VI	Office of Postsecondary Education, Department of Education (Parts 600—699)
VII	Office of Educational Research and Improvement, Department of Education (Parts 700—799)

Title 35—Panama Canal

Chap.	
I	Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I	National Park Service, Department of the Interior (Parts 1—199)
II	Forest Service, Department of Agriculture (Parts 200—299)
III	Corps of Engineers, Department of the Army (Parts 300—399)
IV	American Battle Monuments Commission (Parts 400—499)
V	Smithsonian Institution (Parts 500—599)
VII	Library of Congress (Parts 700—799)
VIII	Advisory Council on Historic Preservation (Parts 800—899)
IX	Pennsylvania Avenue Development Corporation (Parts 900-999)
XI	Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII	National Archives and Records Administration (Parts 1200—1299)

Title 37—Patents, Trademarks, and Copyrights

I	Patent and Trademark Office, Department of Commerce (Parts 1—199)
II	Copyright Office, Library of Congress (Parts 200—299)
III	Copyright Royalty Tribunal (Parts 300—399)
IV	Assistant Secretary for Productivity, Technology and Innovation, Department of Commerce (Parts 400-499)
V	Under Secretary for Economic Affairs, Department of Commerce (500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I	Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I	United States Postal Service (Parts 1—999)
III	Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I	Environmental Protection Agency (Parts 1—799)
V	Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

	SUBTITLE B—Other Provisions Relating to Public Contracts
50	Public Contracts, Department of Labor (Parts 50-1—50-999)
51	Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-99)

Title 41—Public Contracts and Property Management—Continued

Chap.	
60	Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-999)
61	Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61-1—61-999)
	SUBTITLE C—Federal Property Management Regulations System
101	Federal Property Management Regulations (Parts 101-1—101-99)
105	General Services Administration (Parts 105-1—105-999)
109	Department of Energy Property Management Regulations (Parts 109-1—109-99)
114	Department of the Interior (Parts 114-1—114-99)
115	Environmental Protection Agency (Parts 115-1—115-99)
128	Department of Justice (Parts 128-1—128-99)
	SUBTITLE D—Other Provisions Relating to Property Management (Reserved)
	SUBTITLE E—Federal Information Resources Management Regulations System
201	Federal Information Resources Management Regulation (Parts 201-1—201-99)
	SUBTITLE F—Federal Travel Regulation System
301	Travel Allowances (Parts 301-1—301-14)
302	Relocation Allowances (Parts 302-1—302-12)
303	Payment of Expenses Connected with the Death of Certain Employees (Parts 302-1—302-2)
304	Reductions in Meeting and Training Allowance Payments (Parts 304-1—304-2)

Title 42—Public Health

I	Public Health Service, Department of Health and Human Services (Parts 1—199)
IV	Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)
V	Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

	SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)
	SUBTITLE B—Regulations Relating to Public Lands
I	Bureau of Reclamation, Department of the Interior (Parts 200—499)
II	Bureau of Land Management, Department of the Interior (Parts 1000—9999)

Title 44—Emergency Management and Assistance

Chap.	
I	Federal Emergency Management Agency (Parts 0—399)
IV	Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

	SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1—199)
	SUBTITLE B—Regulations Relating to Public Welfare
II	Office of Family Assistance (Assistance Programs), Family Support Administration, Department of Health and Human Services (Parts 200—299)
III	Office of Child Support Enforcement (Child Support Enforcement Program), Family Support Administration, Department of Health and Human Services (Parts 300—399)
IV	Office of Refugee Resettlement, Family Support Administration, Department of Health and Human Services (Parts 400—499)
V	Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
VI	National Science Foundation (Parts 600—699)
VII	Commission on Civil Rights (Parts 700—799)
VIII	Office of Personnel Management (Parts 800—899)
X	Office of Community Services, Family Support Administration, Department of Health and Human Services (Parts 1000—1099)
XI	National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII	ACTION (Parts 1200—1299)
XIII	Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)
XVI	Legal Services Corporation (Parts 1600—1699)
XVII	National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XX	Commission on the Bicentennial of the United States Constitution (Parts 2000—2099)
XXI	Commission on Fine Arts (Parts 2100—2199)
XXII	Christopher Columbus Quincentenary Jubilee Commission (2200—2299)

Title 46—Shipping

I	Coast Guard, Department of Transportation (Parts 1—199)
II	Maritime Administration, Department of Transportation (Parts 200—399)
III	Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400—499)
IV	Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

Chap.	
I	Federal Communications Commission (Parts 0—199)
II	Office of Science and Technology Policy and National Security Council (Parts 200—299)
III	National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1—99)
2	Department of Defense (Parts 200—299)
3	Department of Health and Human Services (Parts 300—399)
4	Department of Agriculture (Parts 400—499)
5	General Services Administration (Parts 500—599)
6	Department of State (Parts 600—699)
7	Agency for International Development (Parts 700—799)
8	Department of Veterans Affairs (Parts 800—899)
9	Department of Energy (Parts 900—999)
10	Department of the Treasury (Parts 1000—1099)
12	Department of Transportation (Parts 1200—1299)
13	Department of Commerce (Parts 1300—1399)
14	Department of the Interior (Parts 1400—1499)
15	Environmental Protection Agency (Parts 1500—1599)
16	Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17	Office of Personnel Management (Parts 1700—1799)
18	National Aeronautics and Space Administration (Parts 1800-1899)
19	United States Information Agency (Parts 1900—1999)
22	Small Business Administration (Parts 2200—2299)
24	Department of Housing and Urban Development (Parts 2400-2499)
25	National Science Foundation (Parts 2500—2599)
28	Department of Justice (Parts 2800—2899)
29	Department of Labor (Parts 2900—2999)
34	Department of Education Acquisition Regulation (Parts 3400-3499)
35	Panama Canal Commission (Parts 3500—3599)
44	Federal Emergency Management Agency (Parts 4400—4499)
51	Department of the Army Acquisition Regulations (Parts 5100-5199)
52	Department of the Navy Acquisition Regulations (Parts 5200-5299)
53	Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)
57	African Development Foundation (Parts 5700—5799)
61	General Services Administration Board of Contract Appeals (Parts 6100—6199)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

63 Department of Transportation Board of Contract Appeals (Parts 6300-6399)

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)

SUBTITLE B—Other Regulations Relating to Transportation

I Research and Special Programs Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Highway Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Transportation (Parts 400—499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Urban Mass Transportation Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—899)

X Interstate Commerce Commission (Parts 1000—1399)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Regulatory Agencies (Fishing and Whaling) (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

(Revised as of September 14, 1990)

Agency	CFR Title, Subtitle or Chapter
CTION	45, XII
dministrative Committee of the Federal Register	1, I
dministrative Conference of the United States	1, III
dvisory Commission on Intergovernmental Relations	5, VII
dvisory Committee on Federal Pay	5, IV
dvisory Council on Historic Preservation	36, VIII
frican Development Foundation	22, XV; 48, 57
gency for International Development	22, II; 48, 7
gricultural Marketing Service	7, I, IX, X, XI
gricultural Research Service	7, V
gricultural Stabilization and Conservation Service	7, VII
griculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Economic Analysis Staff	7, XXXIX
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Finance and Management, Office of	7, XXX
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Grants and Program Systems, Office of	7, XXXII
nformation Resources Management, Office of	7, XXVII
nspector General, Office of	7, XXVI
nternational Cooperation and Development Office	7, XXII
ational Agricultural Library	7, XLI
ational Agricultural Statistics Service	7, XXXVI
Operations Office	7, XXVIII
ackers and Stockyards Administration	9, II
ural Electrification Administration	7, XVII
ural Telephone Bank	7, XVI
ecretary of Agriculture, Office of	7, Subtitle A
oil Conservation Service	7, VI
ransportation, Office of	7, XXXIII
orld Agriculture Outlook Board	7, XXXVIII
Force Department	32, VII
ederal Acquisition Regulation Supplement	48, 53

Agency	CFR Title, Subtitle or Chapter
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Benefits Review Board	20, VII
Bicentennial of the United States Constitution, Commission on the	45, XX
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind and Other Severely Handicapped, Committee for Purchase from	41, 51
Board for International Broadcasting	22, XIII
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights Commission	45, VII
Civil Rights, Office for (Education Department)	34, I
Claims Collection Standards, Federal	4, II
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	44, IV
Census Bureau	15, I
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Endangered Species Committee	50, IV
Export Administration Bureau	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology Administration	15, XI
United States Travel Service	15, XII
Commercial Space Transportation, Office of, Department of Transportation	14, III
Commission on the Bicentennial of the United States Constitution	45, XX
Committee for Purchase from the Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II

Agency	CFR Title, Subtitle or Chapter
Contract Appeals, Board of	7, XXIV
Cooperative State Research Service	7, XXXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary (Commerce)	37, V
Economic Analysis, Bureau of	15, VIII
Economic Analysis Staff, Department of Agriculture	7, XXXIX
Economic Development Administration	13, III
Economics Management Staff	7, XL
Economic Research Service	7, XXXVII
Education, Department of	
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	10, II, III, X; 41, 109
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	18, I
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 115; 48, 15
Environmental Quality, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Export Administration Bureau	15, VII
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Farm Credit Administration	12, VI
Farm Credit System Assistance Board	12, XIII
Farm Credit System Insurance Corporation	12, XIV
Farmers Home Administration	7, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I

Agency	CFR Title, Subtitle or Chapter
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I; 48, 44
Federal Energy Regulatory Commission	18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Finance Board	12, IX
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Federal Retirement Thrift Investment Board	5, VI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	16, I
Federal Travel Regulation System	41, Subtitle F
Finance and Management, Department of Agriculture	7, XXX
Fine Arts Commission	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II, III
General Sales Manager, Office of	7, XXV
General Services Administration	
Contract Appeals Board	48, 61
Federal Acquisition Regulation	48, 5
Federal Information Resources Management Regulations	41, Subtitle E, Ch. 201
Federal Property Management Regulations System	41, 101, 105
Federal Travel Regulation System	41, Subtitle F
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Reduction in Meeting and Training Allowance Payments	41, 304
Relocation Allowances	41, 302
Travel Allowances	41, 301
Geological Survey	30, IV
Government Ethics, Office of	5, XVI

Agency	CFR Title, Subtitle or Chapter
Government National Mortgage Association	24, III
Grants and Program Systems, Office of	7, XXXII
Great Lakes Pilotage	46, III
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Family Support Administration	45, II, III, IV, X
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services Office	45, XIII
Inspector General, Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Social Security Administration	20, III; 45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle B, VII
Solar Energy and Energy Conservation Bank	24, XI
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Information Agency, United States	22, V; 48, 19
Information Resources Management, Office of, Agriculture Department	7, XXVII
Information Security Oversight Office	32, XX
Inspector General, Office of, Agriculture Department	7, XXVI
Inspector General, Office of, Health and Human Services Department	42, V
Inspector General, Office of, Housing and Urban Development Department	24, XII
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation Bureau	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII

Agency	CFR Title, Subtitle or Chapter
United States Fish and Wildlife Service	50, I, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Cooperation and Development Office, Department of Agriculture	7, XXII
International Development, Agency for	22, II
International Development Cooperation Agency	22, XII
International Development, Agency for	22, II
Overseas Private Investment Corporation	22, VII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Japan-United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Standards, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I

Agency	CFR Title, Subtitle or Chapter
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	36, XII
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Institute of Standards and Technology	15, II
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	45, VI; 48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI; 48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Office of Independent Counsel	28, VII
Offices of Independent Counsel, Department of Justice	28, VI
Operations Office, Department of Agriculture	7, XXVIII
Overseas Private Investment Corporation	22, VII
Oversight Board	12, XV
Packers and Stockyards Administration	9, II
Panama Canal Commission	48, 35
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration, Department of Labor	29, XXV
Pension Benefit Guaranty Corporation	29, XXVI
Personnel Management, Office of	5, I; 45, VIII; 48, 17
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	39, III
Postal Service, United States	39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary (Commerce)	37, IV
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II

Agency	CFR Title, Subtitle or Chapter
Reclamation Bureau	43, I
Reduction in Meeting and Training Allowance Payments	41, 304
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Relocation Allowances	41, 302
Research and Special Programs Administration	49, I
Resolution Trust Corporation	12, XVI
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development	24, XI
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30,III
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Tennessee Valley Authority	18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	44, IV
Coast Guard	33, I; 46, I, III; 49, IV
Commercial Space Transportation, Office of	14, III
Contract Appeals Board	48, 63
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Urban Mass Transportation Administration	49, VI
Transportation, Office of, Department of Agriculture	7, XXXIII
Travel Allowance	41, 301
Travel Service, United States	15, XII
Treasury Department	17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision Office	12, V
United States Customs Service	19, I
Truman, Harry S. Scholarship Foundation	45, XVIII

Agency	CFR Title, Subtitle or Chapter
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Affairs Department	38, I; 48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agriculture Outlook Board	7, XXXVIII

Redesignation Table No. 1

At 48 FR 36583, Aug. 12, 1983, 30 CFR Part 221 was redesignated as 43 CFR Part 3160. For the convenience of the user, the following table shows the relationship of the old CFR section numbers to the new CFR section numbers.

Old 30 CFR Part 221	New 43 CFR Part 3160
	Insert new part title—Part 3160—Onshore Oil and Gas Operations.
	Insert new Subpart 3160—Onshore Oil and Gas Operations—General.
221.1 (First sentence).	3160.0–1 Purpose.
221.1 (Second sentence).	3160.0–4 Objectives.
221.1 (Third sentence).	3160.0–2 Policy.
	Insert new § 3160.0–3 Authority.
221.2	3160.0–5.
221.2–1	Inserted as a note immediately after Part title.
221.3	3160.0–7.
221.4–221.9	Remove.
	Insert new Subpart 3161—Jurisdiction and Responsibility.
221.10	3161.1.
221.11	3161.2.
221.12	Remove.
221.13	Remove.
221.14	3164.1.
221.15	3164.2.
221.16–221.19	Remove.
	Insert Subpart 3162—Requirements for Lessees and Operators.
221.20	3162.1.
221.21	3162.3.
221.22	3162.2.
221.23	3162.3–1.
221.24	3162.6.
221.25	3162.5–2.
221.26	3162.4–2.
221.27	3162.3–2.
221.28	3162.3–3.
221.29	3162.3–4.
	Insert new § 3162.5—Environment and safety.
221.30	3162.5–1.
221.31	3162.5–3.
	Insert new § 3162.4—Records and reports.
221.32	3162.4–1.
221.33	3162.8.
	Insert new § 3162.7—Measurement, disposition and protection of production.
221.34	3162.7–2.
221.35	3162.7–3.
221.36	3162.7–1.
221.37	3162.7–4.
221.38–221.49	Remove.
	Insert new Subpart 3163—Non-Compliance and Assessments.
221.50	3163.1.
221.51	3163.2.
221.52	3163.3.
221.53	3163.4.
221.54	3163.5.
221.55–221.59	Remove.
	Insert new Subpart 3164—Special Provisions.
221.60	3164.3.
221.61	3164.4.
221.62–221.69	Remove.
	Insert new Subpart 3165—Relief, Conflicts and Appeals.
221.70	3165.1.
221.71	3165.2.
221.72	3165.3.
221.73	3165.4.
221.74–221.99	Remove.
221.104	3165.1–1.
221.117	3162.4–3.

Redesignation Table No. 2

At 48 FR 36587, Aug. 12, 1983, 30 CFR Part 226 was redesignated as 43 CFR Part 3180. For the convenience of the user, the following table shows the relationship of the old CFR section numbers to the new CFR section numbers.

Old 30 CFR Part 226	New 43 CFR Part 3180
	Insert new part title—Part 3180—Onshore Oil and Gas Unit Agreements—Unproven Areas.
	Insert new Subpart 3180—Onshore Oil and Gas Unit Agreements—General.
226.1(a)	3180.0-1 Purpose.
	Insert new § 3180.0-3 Authority.
226.1(b)	3180.0-4 Policy.
226.2	3180.0-5.
226.3	3181.2.
	Insert new Subpart 3181—Application for Unit Agreement.
226.4	3181.1.
226.5	3181.3.
	Insert new Subpart 3182—Qualifications of Unit Operator.
226.6	3182.1.
226.7	3181.4.
226.8	3183.3-1 Approval of executed agreement.
	Insert new Subpart 3183—Filing and Approval of Documents.
226.9(a)	3183.1 Where to file papers.
226.9(b)	3183.2 Designation of areas.
226.9(c)	3183.3 Executed agreements.
226.9(d)	3183.4 Participating area.
226.9(e)	3183.5 Plan of development.
226.9(f)	3183.6 Return of approved documents.
	Insert new Subpart 3184—Bonds.
226.10	3184.1.
	Insert new Subpart 3185—Appeals.
226.11	3185.1.
	Insert new Subpart 3186—Model Forms.
226.12	3186.1.
226.13	3186.1-1.
226.14	3186.1-2.
226.15	3186.2.
226.16	3186.3.
226.17	3186.4.

Redesignation Table No. 3

At 48 FR 44788, Sept. 30, 1983, 30 CFR Part 270 was redesignated as 43 CFR Part 3260. For the convenience of the user, the following table shows the relationship of the old CFR section numbers to the new CFR section numbers.

Old 30 CFR Part 270	New 43 CFR Part 3260
	Insert new part title—Part 3260—Geothermal Resources Operations.
	Insert new Subpart 3260—Geothermal Resources Operations—General.
270.1 (First sentence).	3260.0-1 Purpose.
270.1 (Second sentence).	3260.0-2 Policy.
	Insert new § 3260.0-3 Authority.
270.2	3260.0-5.
270.2-1	Insert as a note immediately after part title.
	Insert new Subpart 3261—Jurisdiction and Responsibility.
270.10	3261.1.
270.11	3261.2.
270.12	3261.3.
270.13	3261.4.
270.14	3261.5.
270.15	3261.6.
270.16	3261.7.
270.17	3261.8.
	Insert new Subpart 3262—Requirements for Lessees.
270.30	3262.1.
270.31	3262.2.
270.32	3262.2-1.
270.33	3262.3.
270.34	3262.4.
270.34-1	3262.4-1.
270.35	3262.4-2.
270.36	3262.5.
270.37	3262.5-1.
270.38	3262.5-2.
270.39	3262.5-3.
270.40	3262.5-4.
270.41	3262.6.
270.42	3262.6-1.
270.43	3262.6-2.
270.44	3262.6-3.
270.45	3262.5-5.
270.46	3262.7.
270.47	3262.7-1.
270.48	3262.8.
270.50(b)	3262.9 Pilot operations or facility testing.
	Insert new Subpart 3263—Measurement of Production.
270.60	3263.1.
270.61	3263.2.
270.64	3263.3.
	Insert new Subpart 3264—Reports To Be Made by All Lessees.
270.70	3264.1.
270.71	3264.2.
270.71-1	3264.2-1.
270.72	3264.2-2.
270.73	3264.2-3.
270.74	3264.2-4.
270.74-1	3264.2-5.
270.76	Removed.
270.77	3264.3.
270.78	3264.4.
270.79	3264.5.
	Insert new Subpart 3265—Procedure in Case of Violation of the Regulations or Lease Terms.
270.80	3265.1.
	Insert new Subpart 3265—Appeals.
270.90	3266.1.

Redesignation Table No. 4

At 48 FR 44792, Sept. 30, 1983, 30 CFR Part 271 was redesignated as 43 CFR Part 3280. For the convenience of the user, the following table shows the relationship of the old CFR section numbers to the new CFR section numbers.

Old 30 CFR Part 271	New 43 CFR Part 3280
	Insert new part title—Part 3280—Geothermal Resources Unit Agreement—Unproven Areas.
	Insert new Subpart 3180—Goethermal Resources Unit Agreements—General.
271.1 (First sentence).	3280.0-1 Purpose.
271.1 (Second sentence).	3280.0-2 Policy.
	Insert new § 3280.0-3 Authority.
271.2	3280.0-5.
271.3	3281.2.
	Insert new Subpart 3281—Application for Unit Agreement.
271.4	3281.1.
271.5	3281.4.
	Insert new Subpart 3282—Qualification of Unit Operator.
271.6	3282.1.
271.7	3281.3.
	Insert new Subpart 3283—Filing and Approval of Documents.
271.8(a)	3283.2-1 Approval of executed agreement.
271.8 (b), (c), (d)	3283.2 Executed agreement.
271.9(a)	3283.1 Filing of documents and number of counterparts.
271.9(b)	3283.4 Plan of development.
271.9(c)	3283.3 Participating area.
271.9(d)	3283.5 Return of approved documents.
	Insert new Subpart 3284—Bonds.
271.10	3284.1.
	Insert new Subpart 3285—Appeals.
271.11	3285.1.
	Insert new Subpart 3286—Model Forms.
271.12	3286.1 Model unit agreement—unproven areas.
271.13	3286.1-1 Model Exhibit "A".
271.14	3286.1-2 Model Exhibit "B".
271.15	3286.2 Model unit bond.
271.16	3286.3 Model designation of successor operator.
271.17	3286.4 Model change of operator by assignment.

Redesignation Table No. 5

At 48 FR 41589, Sept. 16, 1983, 30 CFR Part 211 was redesignated as 43 CFR Part 3480. For the convenience of the user, the following table shows the relationship of the old CFR section numbers to the new CFR section numbers.

Old 30 CFR No.	New 43 CFR No.
	Insert Part 3480—Coal Exploration and Mining Operations Rules.
	Insert Subpart 3480—Coal Exploration and Mining Operations Rules—General.
211.1(a)	3480.0–4.
211.1(b)	3480.0–1.
211.1(c)	3480.0–6(a).
211.2	3480.0–5.
211.2-1	Redesignated as Note under part heading.
211.3	3480.0–6 (b) through (e).
	Insert Subpart 3481—General Provisions.
211.4	3481.1.
211.5	3481.2.
211.6	3481.3.
	Insert Subpart 3482—Exploration and Resource Recovery and Protection Plans.
211.10	3482.1.
211.11	3482.2.
211.12	3482.3.
	Insert Subpart 3483—*Diligence Requirements.*
211.20	3483.1
211.21	3483.2.
211.22	3483.3.
211.23	3483.4.
211.24	3483.5.
211.25	3483.6.
	Insert Subpart 3484—Performance Standards.
211.40	3484.1.
211.41	3484.2.
	Insert Subpart 3485—Reports, Royalt and Records.
211.62	3485.1.
211.63	3485.2.
211.66	3485.3.
	Insert Subpart 3486—Inspection, Enforcement and Appeals.
211.70	3486.1.
211.71	3486.2.
211.72	3486.3.
211.73	3486.4.
	Insert Subpart 3487—Logical Mining Un
211.80	3487.1.

Redesignation Table No. 6

At 48 FR 36588, Aug. 12, 1983, 30 CFR Part 231 was redesignated as 43 CFR Part 3570. For the convenience of the user, the following table shows the relationship of the old CFR section numbers to the new CFR section numbers.

Old 30 CFR No.	New 43 CFR No.
	Insert Part Heading—Part 3570—Solid Minerals (Other Than Coal) Exploration and Mining Operations.
	Insert Subpart 3570—Solid Minerals (Other than Coal) Exploration and Mining Operations, General.
231.1(b)	3570.0-1 Purpose.
231.3	3570.0-2 Policy.
231.2	3570.0-5 Definitions.
231.1(a)	3570.0-7 Scope.
231.5	3570.0-8.
231.1(c)	3570.0-9 Cross references.
	Insert Subpart 3571—General Obligations of Lessees and Permittees.
231.4	3571.1.
	Insert Subpart 3572—Maps and Plans.
231.10	3572.1.
231.11	3572.2.
231.12	3572.3.
	Insert Subpart 3573—Bore Holes and Samples.
231.20	3573.1.
	Insert Subpart 3574—Mining Methods.
231.31	3574.1.
231.32	3574.2.
231.33	3574.3.
231.34	3574.4.
231.35	3574.5.
	Insert Subpart 3575—Protection Against Mining Hazards.
231.40	3575.1.
231.41	3575.2.
	Insert Subpart 3576—Milling Waste From Mining or Milling.
231.50	3576.1.
231.51	3576.2.
	Insert Subpart 3577—Production Records and Audit.
231.60	3577.1.
231.61	3577.2.
231.62	3577.3.
	Insert Subpart 3578—Inspection, Issuance of Orders and Enforcement of Orders.
231.70	3578.1.
231.71	3578.2.
231.72	3578.3.
231.73	3578.4.
231.74	3578.5.
	Insert Subpart 3579—Late Payment or Underpayment of Charges.
231.80	3579.1.

List of CFR Sections Affected

All sections in this volume of the Code of Federal Regulations which were affected by documents published in the FEDERAL REGISTER since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964—1972," published in three separate volumes.

1973

43 CFR

	38 FR Page
Chapter II	
Nomenclature changes	10009, 12110, 12112
Technical amendment to chapter	10940
1821.2 Revised	12111
1821.2-1 Revised	12111
1821.2-2 Revised	12111
1821.2-3 Revised	12111
1855.1—1855.9-2 (Subpart 1855) Removed	27825
2091.1 (a) revised	34542
2091.6-5 Redesignated from 2091.9-5 and revised	34542
2091.9-5 Redesignated as 2091.6-5 and revised	34542
2561.1 (e) revised	34542
2650 Added	14218
2651.4 (h) added	34542
2653.3 (d) added	34542
2800.0-5 (a) and (h) revised	1588
2801.1-4 Revised	16867
3000.0-5 Revised	35082
3000.4 Revised	35082
3112.2-1 (a)(1), (a)(2), (a)(3) revised, (a)(4) added	22230
3112.5-1 Revised	22230
Corrected	23519
3112.5-3 Removed	22230
3200 Added	35082
3210 Added	35093
3220 Added	35094
3230 Added	35095
3240 Added	35097
3541.0—3541.6 (Subpart) Added	18884
Chapter II—Continued	
3831.1 Revised	24650
3861.5-1 Revised	30001

1974

43 CFR

	39 FR Page
Chapter II	
1821.2-1 (d) amended	5634
2071.1 (c) added	13613
2821.6 Revised	39440
2822.1-2 (b) revised	39440
2822.2 Revised	39440
2822.2-1 Revised	39440
2822.2-2 Revised	39440
2924.3-1 Added	13613
3107.2-1 (b) revised	30352

1975

43 CFR

	40 FR Page
Chapter II	
1780 Heading added	3295
1784.0-1—1784.4 (Subpart 1784) Added	3295
1784.5—1784.7 Added to Subpart 1784	25453
2650.0-7 (d) revised	33174
2650.3-2 (a) revised	33174
2650.8 Revised	33175
2651.2 (a)(4) amended; (a)(5) revised	33175
2802.1-2 Revised	17842
2802.2—2802.2-2 Revised	17843
2802.2-4 Added	17844
2802.4—2802.4-2 Revised	17844

43 CFR—Continued

40 FR Page

Chapter II—Continued

2920.2 Revised......23473
2920.3 (a)(1) revised......23473
2920.4 (a) revised......23473
2920.7 Added......23473
3107.2-1 (b) revised......12507
3300.1 Revised......45171
3302.1 Revised......45171
3302.3 Added......45171
3302.3-1—3302.3-4 Added......45171
3302.3-2 (a) amended......52847
3302.4 (c) and (d) added......45173
3302.5 Revised......45173
3304.1 Amended......43489
3305.1 Revised......45173
3305.2 (e) added......45174

1976

43 CFR

41 FR Page

Chapter II

1725.2 (b) amended......29122
1784.5 (a)(2) revised......14734
2091.3-2 Heading and (a) revised......1598
2096.0-3 (b) removed......1598
2096.1-1 (b) removed......1598
2096.1-2 (a)(2), (3), (4), and (5) removed......1598
2110.0-3 (c) added......15851
(d) added......29122
2130 Added......15851
2274.0-3—2274.1 (Subpart 2274) Added......15851
2533.2 (c) revised......29122
2550 Heading revised......29122
2564.7 (a) revised......29122
2610 Removed......1598
2650.4-7 (c)(1) removed......14737
2650.7 (d) added......14737
(d) corrected......17909
2653.0-3 (c) amended; (e) and (f) added......14737
2653.0-5 (b) amended......14737
2653.1 (a) and (b) revised......14737
2653.3 Revised......14737
(a) corrected......17909
2653.4 Revised......14737
(b) amended......29818, 33267
(b) effective date extended......44041
2653.5 Revised......14738
(k) corrected......17909
(h) amended......49487
2653.6 Revised......14739
(a)(3) amended......49487
2653.8-3 Added......14740

43 CFR—Continued

41 FR Page

Chapter II—Continued

2653.9 Redesignated as 2653.11; new 2653.9 added......14740
(d) amended......49487
2653.10 Added......14740
2653.11 Redesignated from 2653.9; (b) revised......14740
2710.0-8 (b) revised......16803
2741.2 (d) revised......1598
2741.4 Heading revised......21642
2741.6 (a) revised......29123
2763.3 (b) amended......29123
2801.1-5 (f) revised......47252
2811.1 Amended......21642
2812.0-6 (h) amended......21642
2812.1-1 (b) amended......21642
2812.4-4 (c) amended......21642
2812.7 Amended......21642
2812.9 Revised......29123
2821.3-3 Revised......29123
2861.1 (a) removed; (d) amended; (b)-(d) redesignated as (a)-(c)......29123
2912.1-1 (a) revised......29123
2912.3—2912.3-4 Added......22939
2914 Subpart heading revised......29122
2920.0-5 (d) revised; (f) and (g) added......22940
2920.3 (a)(3) added......22940
2923.2 Amended......22940
3041.0-1—3041.8 (Subpart 3041) Added......20252
Guidelines......43722
3100.0-3 (a)(1) revised......29122
3103.3-3 Revised; eff. 10-28-76......43149
3104.0-5—3104.8 Revised......45566
3130.2 Revised; eff. 10-28-76......43149
3130.2-1 Added; eff. 10-28-76......43149
3130.2-2 Added; eff. 10-28-76......43149
3130.3-1 Revised; eff. 10-28-76......43149
3130.4-4 Revised; eff. 10-28-76......43149
3206.1-1 (b) revised......23386
3206.1-2 Revised......23387
3302.3-2 (a) amended......3859, 32891, 48738
(d) added......3737
3303.5 (a) revised......53019
3305a.4 Revised......53019
3500.0-5 (d)-(g) added......21780
(d)-(g) revised......56644
3503.3-2 (b)(1) revised......21781, 56645
3520.0-4 Added......22053
3520.1-1 Revised......18847
3520.1-2 Redesignated as 3520.1-3; new 3520.1-2 added......22053

43 CFR—Continued

Chapter II—Continued	41 FR Page
3520.1-3 Redesignated from 3520.1-2	22053
Revised	22054
3520.2-1 (a)(3) added	56645
3520.2-2 (a) revised	36022
3520.2-5 Added	21781
Revised	56645
3520.2-6 Added	56645
3521.1-1 Revised	18847
(a)(2) amended	43149
3521.1-4 Added	18848
3521.1-5 Added	18848
3521.2-1 (a)(1)(vi) added	22054
3521.2-5 (a) revised	22054
3521.4-1 Revised	36022
3522.2-1 Revised	21781, 56646
3523.2-1 (b)(1) amended; (b)(1)(ii) and (iii) added	21781
(b)(1) redesignated as (b)(1) heading and (b)(1)(i); (b)(1)(ii) and (iii) added	56646
3600.0-3 (a) revised	29122
3720.0-1—3720.0-5 (Subpart 3720) Removed	50257
3721.1 (Subpart 3721) Removed	50257
3723.1—3723.2 (Subpart 3723) Removed	50257
3724.1—3724.5 (Subpart 3724) Removed	50257
3746.1 (c) and (d) removed	50690
3814.1 (b) amended	29122
3827.0-1—3827.6 (Subpart 3827) Added	15852
3862.4-1 Heading revised	21642

1977

43 CFR

Chapter II	42 FR Page
1880 Added	51581
2360 Added	28721
2508 Incorrectly revoked by PLO 2625; corrected by PLO 5626	48830
2653.0-3—2653.11 (Subpart 2653) Filing date extended	779
2653.4 (c) filing date extended	64119
2851.1-1 (a)(5) revised	44985
2851.2-1 (c)(4) revised	44986
3041.0-1—3041.8 (Subpart 3041) Revised	4444, 25462
3041.0-5 (b) introductory text corrected	8144

43 CFR—Continued

Chapter II—Continued	42 FR Page
3041.2-2 (f) introductory text amended; (f)(12)(iii) added	4441
3103.2-1 (b) revised	1032
3103.3-2 (a) revised	1033
3106.2-1 Revised	1033
3302.2 (a) revised	53963
3305a.4 Revised	53964
3500.0-5 (h) and (i) revised	4451, 25469
3501.1-4 (b)(1)(i) and (ii) revised	4451, 25469
3501.1-5 Revised	4451, 25469
3501.2-1 Revised	4452, 25469
3502.9 Heading revised	4452
Revised	25469
3502.9-1 Revised	4452, 25469
3503.3-1 (b)(1) revised	4452, 25469
3503.3-3 Added	4452
Republished	25469
3505.1-1 Removed	4452, 25469
3505.2 Removed	25469
3505.2-1—3505.2-4 Removed	4452, 25469
3507.0-1—3507.5 (Subpart 3507) Added	4458
3511.2-1 (b)(1) removed	4452, 25470
3511.2-2 Removed	25470
3511.4-4 Removed	4452
3520.0-3 Revised	4452, 25470
3520.0-4 Removed	4453, 25470
3520.1-2 Removed	4453, 25470
3520.1-3 Removed	4453, 25470
3520.2-1 Revised	4453, 25470
3521.1-4 Removed	4453
Reinstated	25470
3521.1-5 Removed	4453
Reinstated	25470
3521.2-1 Revised	4452, 25470
3521.2-2 Revised	4452, 25470
3521.3-2 (a) designated as (a)(1); (a)(2) added	64346
3523.1-3 Added	64346
3523.2-1 (b)(1) (ii) and (iii) technical correction	44545
3524.1-1 Removed	4453, 25470
3524.2-1 Revised	4453, 25470
3525.0-2—3525.9 (Subpart 3525) Revised and renumbered from 3525.1—3525.19	25471
3525.1—3525.19 (Subpart 3525) Added	4453
3526.0-1—3526.3-2 (Subpart 3526) Added	64346
3833.0-1—3833.5 (Subpart 3833) Added	5300

1978

43 CFR

43 FR Page

Chapter II
1882.0-1—1882.7 (Subpart 1882) Added.......... 57887
2650.0-5 (n) through (u) added...55328
  Technical correction....... 57144, 57888
2650.4-7 Revised..........55329
  Technical correction....... 57144, 57888
2653.4 (c) filing date extended....11822
2653.5 (h) and (i) waiver of regulations..........17942
2653.6 (a)(3) waiver of regulations..........17942
2653.9 (d) waiver of regulations..........17942
2920.0-5 (e) removed.......... 7870
  (e) effective date corrected.........11822
  Technical correction.......... 38009
2924.1—2924.3-1 (Subpart 2924) Removed.......... 7870
  Effective date corrected..........11822
  (Subpart 2924) Technical correction.......... 38009
3101.2-1 (f) revised..........37202
3301.7 Added..........3893
3301.8 Added..........3895
3302.3-2 (a) amended........32301, 58090
3302.5 Amended.......... 44532
3308.0-1—3308.4 (Subpart 3308) Added.......... 49983

1979

43 CFR

44 FR Page

Chapter II
Interim management policy and guidelines..........72014
1600 Added..........46392
1821.2-1 (d) table revised..........55875
  (a) amended (temporary).......... 59530
2540 Heading revised..........41793
2540.0-3 (g) added..........41793
2541.1—2541.5 (Subpart 2541) Heading revised.......... 41793
2547.1—2547.7 (Subpart 2547) Added.......... 41793
2547.1 (a) corrected..........55876
2720 Added..........1342
  Effective date corrected..........4950
2740.0-1—2740.0-7 (Subpart 2740) Revised..........43471
  Technical correction.......... 55876
2740.0-8 (c) added.......... 41794
2741.1—2741.8 (Subpart 2741) Revised..........43471

43 CFR—Continued

44 FR Page

Chapter II—Continued
  Technical correction.......... 55876
2742.1—2742.4 (Subpart 2742) Added.......... 41794
2802.1-2 (a) (11) and (12) removed.......... 58137
2880 Heading revised..........58129
2880.0-3—2880.0-7 (Subpart 2880) Added.......... 58129
2881.1—2881.3 (Subpart 2881) Revised..........58129
2882.0-3 (Subpart 2882) Redesignated as 2887.0-3 (Subpart 2887) and revised.......... 58129
2882.1—2882.4 (Subpart 2882) Added.......... 58129
2883.0-3—2883.2-4 (Subpart 2883) Removed.......... 38276
2883.1—2883.8 (Subpart 2883) Added.......... 58129
2884.1 (Subpart 2884) Added...... 58129
2887.0-3 (Subpart 2887) Redesignated from 2882.0-3 (Subpart 2882) and revised..........58129
2912.0-7—2912.4-2 (Subpart 2912) Revised..........43473
3041.0-1—3041.8 (Subpart 3041) Removed; regulations transferred to 30 CFR Part 211 and 43 CFR Part 3460.......... 42650
  Correctly removed..........56340
3110 Suspended in part..........64085
3203.2 Revised.......... 12038
3203.6 Revised.......... 12038
3204.3 Revised.......... 12038
3220.5 Revised.......... 12039
3220.6 Revised.......... 12039
3250 Added..........20391
3300 (Group 3300) Heading revised..........38276
3300 Revised.......... 38276
  Technical correction.......... 55380
3302.3-2 (a) amended.......... 36386
3316.3-1 (l)(3)(ii) (A) and (B) corrected.......... 55380
3316.3-2 (a), (c), and (d) corrected..........55380
3316.3-3 (e) (1) and (2) corrected..........55380
3316.3-4 (b) corrected..........55380
3317.4 (c) corrected..........55380
3318.2 Corrected.......... 55380
3319.9 (a) corrected..........55380
3320.2 (d)(3) corrected.......... 55380
3321.1 Designation and (b) corrected..........55380

43 CFR—Continued

Chapter II—Continued	44 FR Page
3340.1 (a)(6) corrected	55380
3340.2-1 (d)(3)(i) and (ii) designations and (e)(1) and (2) corrected	55380
3340.5 Heading corrected	55380
3400—3470 (Group 3400) Added	42609
3400 Added	42609
3400.4 (a) corrected	56339
3410 Added	42613
3420 Added	42615
3420.2-3 (e)(3)(i)(B) corrected	56339
3420.3-2 (k) corrected	56340
3420.4-2 (d) corrected	56340
3422.1-1 Effective date deferred in part	45946
3430 Added	42628
3430.3-2 (c) introductory text corrected	56340
3432.1 (b) corrected	56340
3437.1-1 (b)(2) corrected	56340
3440 Added	42634
3450 Added	42635
3460 Added	42638
3470 Added	42643
3472.1 Correctly redesignated as 3472.1-1; new 3472.1 correctly added	56340
3472.1-1 Correctly redesignated as 3472.1-2; new 3472.1-1 correctly redesignated from 3472.1	56340
3472.1-2 Correctly redesignated as 3472.1-3; new 3472.1-2 correctly redesignated from 3472.1-1	56340
3472.1-3 Correctly redesignated from 3472.1-2	56340
3474.2 Corrected	56340
3500.0-3 (a)(1) removed; (a)(2) through (6) redesignated as (a)(1) through (5)	42650
3500.0-5 (d) through (i) removed	42650
3500.1-1 Amended	42650
3500.1-3 (c)(1) and (f) amended	42650
3501.1-3 Introductory text amended	42650
3501.1-4 (b)(1) removed; (b)(2) through (6) redesignated as (b)(1) through (5)	42650

43 CFR—Continued

Chapter II—Continued	44 FR Page
3501.1-5 (a) heading and (b) removed; (a) introductory text and (1) through (5) redesignated as introductory text and (a) through (e)	42650
3501.2-1 (a) heading and (b) removed; (a) introductory text and (1) through (7) redesignated as introductory text and (a) through (g)	42650
3501.2-3 (a)(1) amended	42650
(a)(1) corrected	56340
3501.3-2 (b)(2)(i) removed; (b)(2)(ii) through (v) redesignated as (b)(2)(i) through (iv)	42650
3502.1-1 (c) removed	42650
(c) correctly removed	56340
3502.2 Revised	42650
Correctly revised	56340
3502.2-1 Correctly removed	56340
3502.2-2 Correctly removed	56340
3502.9 Removed	42650
Correctly removed	56340
3502.9-1 Correctly removed	56340
3503.2-2 (a) and designation (b) removed	42650
3503.3-1 (b)(1) removed; (b)(2) through (6) redesignated as (b)(1) through (5)	42650
3503.3-2 (b)(1) removed; (b)(2) and (3) redesignated as (b)(1) and (2); (c)(3)(i) removed; (c)(3)(ii) redesignated as (c)(3) and heading revised; (d)(1), (2) introductory text and (i) and (e)(5) amended	42650
3503.3-3 Removed	42650
3504.2-1 (b)(1) amended	42650
3504.5-1 Amended	42650
Corrected	56340
3504.6-1 Amended	42650
Corrected	56340
3504.7-1 Amended	42650
Corrected	56340
3507.0-1—3507.5 (Subpart 3507) Removed	42650
3511.4-4 Removed	42650
3520.0-3 (a) amended	42650
3520.1-1 (a) and (c) heading and text amended	42650
3520.2-1 (a)(3) removed	42650
3520.2-5 Removed	42650
3520.2-6 Removed	42650

43 CFR—Continued

44 FR Page

Chapter II—Continued

3521.1-1 (e), (h)(1) and (j)(3) revised; (i)(1) removed; (i) (2) and (3) redesignated as (i) (1) and (2); (b)(1), (c)(4), and new (i)(1) amended....42651
3521.2-1 (a)(1)(i) amended....42651
3522.2-1 (a) designation and (b) removed....42651
3523.2-1 (b)(1) removed; (b)(2)(i) redesignated as (b) and heading revised....42651
3524.2 Removed; new 3524.2 redesignated from 3524.3....42651
3524.2-1 Removed; new 3524.2-1 redesignated from 3524.3-1....42651
3524.3 Redesignated as 3524.2....42651
3524.3-1 Redesignated as 3524.2-1....42651
3525.0-2—3525.9 (Subpart 3525) Removed....42651
3526.0-1 Amended....42651
3526.0-3 (f) removed....42651
3526.0-5 Removed....42651
3526.0-7 Added....42651
3526.1 (a) and (b) amended....42651
3526.2 (a)(3), (b)(1), (e) heading, and (f) amended; (c) (2) and (3) removed; (c)(1) designation removed....42651
3526.3-1 (a) and (b)(3) amended....42651
3526.3-2 Removed....42651
3530.0-1—3530.2-3 (Subpart 3530) Removed; regulations transferred to Part 3440....42651
3550.1-1 (a)(1) heading revised....42651
3563.1-1 Amended....42651
3564.1 Amended....42651
3564.6 Amended....42651
  Corrected....56340
3565.0-3 Amended....42651
3566.2 Amended....42652
  Corrected....56340
3568.2-2 Amended....42652
3833.0-1—3833.5 (Subpart 3833) Heading revised....9722
3833.0-3 (e) added....9722
3833.0-5 (e) through (i) revised....9722
3833.1-1 Revised....20429
3833.1-2 Heading (a), (c)(1) through (c)(8) and (d) revised; (c) (9) and (10) removed....9722
  (a) revised; (b) amended....20430
3833.1-3 Revised....9722

43 CFR—Continued

44 FR Page

Chapter II—Continued

3833.2 Revised....9723
3833.2-1 Revised....9723
  (b), (c), and (d) revised....20430
3833.2-2 Introductory text, (a) introductory text, (1), and (b) introductory text revised....9723
3833.2-3 Revised....9723
3833.4 (a) revised....9723
3833.5 (b) through (d) revised; (f) and (g) added....9723

1980

43 CFR

45 FR Page

Chapter II

Interim management policy and guidelines corrected....3037
1780 Revised....8177
1821.2-1 (a) revised....20476
1881.0-5 (b)(1)(iii), (c)(1)(iv) and (v), (2)(i), and (d) revised; (c)(1)(vi) and (vii) added....47619
1881.1-2 (d)(2) revised; (e) added....47619
1881.1-3 (b) revised; (d) added....47620
2610 Added....34232
2653.9 (c) waiver....31110
2655.0-3—2655.4 (Subpart 2655) Added....70206
2710 Revised....39418
2730 Removed....39420
2750 Removed....39420
2760.0-3—2760.0-6 (Subpart 2760) Removed....39420
2761.1—2761.3 (Subpart 2761) Removed....39420
2762.1—2762.9 (Subpart 2762) Removed....39420
2763.0-3—2763.8 (Subpart 2763) Removed....39420
2766.1 (Subpart 2766) Removed....39420
2800 Revised....44526
2811.0-3—2811.1 (Subpart 2811) Removed....44537
2822.0-3—2822.2-2 (Subpart 2822) Removed....44537
2840 Removed....44537
2850 Removed....44537
2860 Removed....44537
2870 Removed....44537

43 CFR—Continued

	45 FR Page
Chapter II—Continued	
2880.0-5 (i) and (k) revised; (l) through (n) redesignated as (m) through (o); new (l) added; eff. 10-14-80	59880
2882.1 (c) corrected	64178
2882.2-2 (a) and (b) corrected	34887
2882.2-3 (a) corrected	34888
2882.2-4 (e) corrected	34888
2883.1-1 Amended	64178
2883.1-2 Corrected	64178
2890 Removed	44537
2800—2890 (Group 2800) Appendixes A, B, and C removed	44537
3100.0-5 (b) and (d) revised	35160
3100.5-3 Revised	35161
3101.1-1 Revised	35161
3101.1-5 (c)(3)(iii) revised	35161
3101.2-1 Revised	35161
3102.1 Revised	35161
3102.1-1 Correctly removed	72163
3102.1-2 Correctly removed	72163
3102.2 Revised	35161
3102.2-1 Revised	35161
3102.2-2 Revised	35161
3102.2-3 Added	35162
3102.2-4 Added	35162
3102.2-5 Added	35162
3102.2-6 Added	35162
3102.2-7 Added	35162
3102.2-8 Redesignated from 3102.8 and nomenclature change; (a)(2) and (b)(2) amended	35162
3102.2-9 Redesignated from 3102.9 and amended	35162
3102.3 Revised	35162
3102.4—3102.7 Removed	35162
3102.8 Redesignated as 3102.2-8 and nomenclature change; (a)(2) and (b)(2) amended	35162
3102.9 Redesignated as 3102.2-9 and amended	35162
3103.1-1 Revised	35162
3103.2-1 (a) revised	35162
3103.3-8 Revised	18375
3106.2-2 Heading and (a) revised	30057
3108.1—3108.3 (Subpart 3108) Heading revised	35163
3108.2-2 Removed	35163
3108.2-3 Removed	35163
3108.3 Revised	35163
3110.1-3 Revised	35163
3110.1-4 Heading and (b) revised	8885, 35163
3110.1-6 (b) revised	35163

43 CFR—Continued

	45 FR Page
Chapter II—Continued	
3111.1-1 (e)(2) removed; (e) (3), (4), and (5) redesignated as (e) (2), (3), and (4)	35163
3112.1—3112.7 (Subpart 3112) Revised	35163
3112.2-1 (a)(5) added	8885
3120.1-4 Amended	35166
3316.3-2 (a) revised	69174
3316.3-4 (b), (c)(4), and (d) revised	69175
3316.4 (h)(2) revised	69175
3317.1 (a) and (b) revised; (e) added	69175
3340.0-2 Second paragraph removed	77438
3340.0-4 Added	77438
3340.1 (a)(11) revised	69175
3340.2-1 (e)(1) revised	77438
3503.3-2 (b) revised	36035
3611.4 Added	77438
3800 Added	13974
3802.0-1—3802.6 (Subpart 3802) Added; interim	13974
3809.0-1—3809.6 (Subpart 3809) Added	78909
3809.0-5 (a) corrected	82934
3809.1-3 (b), (c)(4), and (f) corrected	82934
3809.1-4 (a) corrected	82934
3809.1-5 (c)(5) corrected	82934
3809.1-6 (b) and (e) corrected	82934
3809.1-8 (a) introductory text, (1), and (2) corrected	82934
3809.1-9 (a), (b), (e) and (g) corrected	82934
3809.2-1 (b) and (c) corrected	82934
3809.2-2 Introductory text and (c) corrected	82934
3809.3-1 (a) corrected	82934
3809.3-2 (a), (b), (c), and (e) corrected	82934

1981

43 CFR

	46 FR Page
Chapter II	
1821.2-1 (d) amended	58316
2091.2-3 Removed; new 2091.2-3 redesignated from 2091.2-4	1642
Removal and redesignation effective date deferred	10707
Removal and redesignation effective date deferred and request for comments	19234

43 CFR—Continued

46 FR Page

Chapter II—Continued

Removal and redesignation effective date confirmed.............22586
2091.2-4 Redesignated as 2091.2-3; new 2091.2-4 redesignated from 2091.2-5................1642
Removed..5805
Redesignation and removal effective date deferred................10707
Redesignation and removal effective date deferred and request for comments..................19234
Redesignation and removal effective date confirmed.............22586
2091.2-5 Redesignated as 2091.2-4..1642
Removed..5805
Redesignation and removal effective date deferred................10707
Redesignation and removal effective date deferred and request for comments..................19234
Redesignation and removal effective date confirmed.............22586
2091.2-6 Added..............................38508
2200 Revised...1638
Effective date deferred...............10707
Effective date deferred and request for comments..................19234
Effective date confirmed............22586
2211.0-3—2211.2 (Subpart 2211) Removed...1642
Removal effective date deferred...10707
Removal effective date deferred and request for comments...19234
Removal effective date confirmed...22586
2212.1 Amended..............................1642
Effective date deferred...............10707
Effective date deferred and request for comments..................19234
Effective date confirmed............22586
2220 Removed...................................1642
Removal effective date deferred...10707
Removal effective date deferred and request for comments...19234
Removal effective date confirmed...22586
2230 Removed...................................1642
Removal effective date deferred...10707

43 CFR—Continued

46 FR Page

Chapter II—Continued

Removal effective date deferred and request for comments...19234
Removal effective date confirmed...22586
2240.1 Amended..............................1642
Effective date deferred...............10707
Effective date deferred and request for comments..................19234
Effective date confirmed............22586
2250.1 Amended..............................1642
Effective date deferred...............10707
Effective date deferred and request for comments..................19234
Effective date confirmed............22586
2260 Removed...................................1642
Removal effective date deferred...10707
Removal effective date deferred and request for comments...19234
Removal effective dated confirmed...22586
2271.1 Amended..............................1642
Effective date deferred...............10707
Effective date deferred and request for comments..................19234
Effective date confirmed............22586
2273.0-3 Amended..........................1642
Effective date deferred...............10707
Effective date deferred and request for comments..................19234
Effective date confirmed............22586
2300 Revised...5796
Effective date deferred...............10707
Effective date deferred and request for comments..................19234
Effective date confirmed............22586
2310 Removed...................................5805
Removal effective date deferred...10707
Removal effective date deferred and request for comments...19234
Removal effective date confirmed...22586
2320 Removed...................................5805
Removal effective date deferred...10707
Removal effective date deferred and request for comments...19234
Removal effective date confirmed...22586
2340 Removed...................................5805

43 CFR—Continued

Chapter II—Continued	46 FR Page
Removal effective date deferred	10707
Removal effective date deferred and request for comments	19234
Removal effective date confirmed	22586
2350 Removed	5805
Removal effective date deferred	10707
Removal effective date deferred and request for comments	19234
Removal effective date confirmed	22586
2621.1 Removed; new 2621.1 redesignated from 2621.2	24135
(d)(2) and (e) removed; (d) (3), (4), and (5) redesignated as (d) (2), (3) and (4); new (d)(2) revised	24135
2621.2 Redesignated as 2621.1; new 2621.2 redesignated from 2621.3	24135
2621.3 Redesignated as 2621.2; new 2621.3 redesignated from 2621.4	24135
2621.4 Redesignated as 2621.3; new 2621.4 redesignated from 2621.5	24135
2621.5 Redesignated 2621.4	24135
2712.0-3—2712.1 (Subpart 2712) Added; interim; eff. 9-29-81 to 12-31-81	44677
2920 Revised	5777
Effective date deferred	10707
Effective date deferred and request for comments	19234
Effective date confirmed	22586
3100 Technical corrections	46810
3100.0-3 (d)(5) revised; (d)(7) amended	62042
3101.4-5 Revised	62042
3101.4-7 Heading revised	62043
3103.1-3 Amended; interim	45887
3103.2-1 (a) amended; interim	45887
3109.5-2 (e) and (g) heading revised	62043
3110 Partial suspension removed	37250
Technical corrections	46810
3111.1-3 (a) amended; interim	45887
(e) and (g) heading revised	62043
3112.2-2 (a) amended; interim	45887
3130 Redesignated as 3140; new 3130 added	55497

43 CFR—Continued

Chapter II—Continued	46 FR Page
3140 Redesignated from 3130	55497
3500.0-3 (c)(7) revised; (c)(9) amended	62043
3500.1-3 (f) and (h) heading revised	62043
3504.1-2 (f) and (h) heading revised	62043
3566.1—3566.4 (Subpart 3566) Revised	62043
3568.0-3 Amended	62044

1982

43 CFR

Chapter II	47 FR Page
1784.3 (a) revised; (b), (c), and (d) designated as (e), (f), and (g); new (b), (c), and (d) added	6429
(b) amended	34389
1784.6-1 (a) revised	6429
1813.1-1 Revised	32130
1821.2-1 (a) and (d) revised	12292
(d) introductory text revised	14488
(d) amended; eff. 10-14-82	40413
2650 Nomenclature changes; interim	26392
2800 Table of contents note added	12569
2800.0-5 (l) revised; (n) added; eff. 10-4-82	38805
2801.1-1 (h) introductory text amended; (h)(1), (4), and (6) removed; (h)(2) redesignated as (h)(1) and revised; (h)(3) and (5) redesignated as (h)(2) and (3) and amended; eff. 10-4-82	38805
2802.1 (d) amended; eff. 10-4-82	38805
(d) correctly amended	43953
2802.3 Revised	12569
2802.3-1—2802.3-6 Removed	12569
2802.4 (h) revised	12570
2802.5 Introductory text and (a), (b), and (c) redesignated as (a) introductory text and (1), (2), and (3); new (b) added	12570
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); eff. 10-4-82	38805
2803.1-2 (f) added; eff. 10-4-82	38806

43 CFR—Continued

47 FR Page

Chapter II—Continued

2803.4 (b) amended; eff. 10-4-82.....38806
2803.6-1 (b) amended; eff. 10-4-82.....38806
2803.6-5 (a) amended; eff. 10-4-82.....38806
(a)(1) revised; (a)(2) removed; (a)(3) redesignated as (a)(2); eff. 10-4-82.....38806
2805.1 (Subpart 2805) Removed.....12570
2806.1 (b) amended; (c) removed; eff. 10-4-82.....38806
2806.2 Amended; eff. 10-4-82.....38806
2806.2-1 (a) revised; (b) amended; eff. 10-4-82.....38806
2820 Removed; eff. 10-28-82.....42575
2882.1 (c) revised; eff. 10-4-82.....38807
2882.2-1 (b) through (h), (k), and (l) removed; (i) and (j) redesignated as (b) and (c); (a) and new (b) amended.....12571
2882.2-2 (a) revised.....12571
2882.2-3 Revised.....12571
2882.2-4 Removed.....12571
2882.3 (m) revised.....12571
2883.1-2 Revised; eff. 10-4-82.....38807
2883.6-1 (a)(1) amended; eff. 10-4-82.....38807
2883.7 Revised; eff. 10-4-82.....38807
2883.8 Revised; eff. 10-4-82.....38807
3102.1—3102.5 (Subpart 3102) Revised; interim.....8545
3103.1-1 Revised; interim.....8545
3103.1-3 Amended.....2864
3103.2-1 (a) amended.....2864
3103.3-2 (f) added.....2864
3106.1—3106.1-3 Revised.....8545
3106.1-4—3106.1-6 Removed.....8545
3106.2-1 Amended.....8545
3106.2-2 Revised.....8545
3111.1-3 (a) amended.....2864
3112.2-2 (a) amended.....2864
(a) revised.....8545
3112.2-3 Revised.....8545
3112.6-1 (b) revised.....8546
3130 Regulatory impact analysis availability.....21546
3132.4 Revised.....8546
3140 Regulatory impact analysis availability.....21546
Redesignated as 3150; new 3140 added.....22478
3150 Redesignated from 3140.....22478
3201.2 (b) amended.....5004
3202.2-7 Removed.....5004

43 CFR—Continued

47 FR Page

Chapter II—Continued

3205.3-4 Revised.....5004
3207.1—3207.3-2 (Subpart 3207) Added.....5004
3300 Redesignated as 30 CFR Part 256.....47006
3300.2 (a) and (d) revised.....25970
3300.4 Revised.....25970
3310.0-5—3310.4 (Subpart 3310) Heading revised.....25970
3310.0-5 Correctly redesignated as 30 CFR 256.14.....50684
3310.1 Correctly redesignated as 30 CFR 256.16.....50684
3310.2 Heading revised; (b) amended.....25970
Correctly redesignated as 30 CFR 256.17.....50684
3310.3 Correctly redesignated as 30 CFR 256.19.....50684
3310.4 Correctly redesignated as 30 CFR 256.20.....50684
3313.1—3313.2 (Subpart 3313) Heading revised.....25970
3313.1 Revised.....25970
3313.2 Heading, (a) and (b) revised.....25971
3314.1—3314.2 (Subpart 3314) Heading revised.....25971
3314.1 Revised.....25971
3314.2 Revised.....25971
3315.1 (a) amended.....25971
3315.3 Removed; new 3315.3 redesignated from 3315.4 and (a) amended and (b) revised.....25971
3315.4 Redesignated as 3315.3 and (a) amended and (b) revised.....25971
3316.3-2 (a), (c), and (d) amended.....25971
3316.3-3 (e) (1) and (2) amended.....25971
3316.3-4 (b) amended.....25971
3316.4 (d) and (e) revised; (g) removed; (h) and (i) redesignated as (g) and (h); new (g) amended.....25971
3316.5 (e) revised; (f) amended.....25972
3316.6 Revised.....25972
3317.1 (a), (b), and (e) amended.....25972
3317.2 (c) added.....25972
3300 Appendix A revised; Appendix B removed.....25972
3400—3470 (Group 3400) Corrected.....38131

43 CFR—Continued

47 FR Page

Chapter II—Continued
3400.0-4 Removed........................33133
3400.0-5 Amended........................33133
Corrected........................38131
3400.1 Existing text designated as (a) and amended; (b) added........................33134
3400.3-4 Amended........................33134
3400.4 Amended........................33134
3400.5 Added........................33135
3410.0-4 Removed........................33135
3410.1-2 (b) amended........................33135
3410.2-1 Amended........................33135
3410.2-2 Revised........................33135
3410.2-3 Removed; new 3410.2-3 redesignated from 3410.2-5.....33135
3410.2-4 Removed........................33135
3410.2-5 Redesignated as 3410.2-3........................33135
3410.2-6 Removed........................33135
3410.3-1 Amended........................33135
Corrected........................38131
3410.3-2 Amended........................33135
3410.3-3 Amended........................33138
3410.3-4 Removed; new 3410.3-4 redesignated from 3410.3-5 and amended........................33135
3410.3-5 Redesignated as 3410.3-4 and amended..............33135
3410.4 (b) revised........................33136
3410.5 Amended........................33136
3420.0-2 Revised........................33136
3420.0-6 Removed........................33136
3420.1-1 Removed; new 3410.1-1 redesignated from 3420.1-2.....33136
3420.1-2 Redesignated as 3420.1-1; new 3420.1-2 redesignated from 3420.1-3 and revised........................33136
3420.1-3 Redesignated as 3420.1-2; new 3420.1-3 redesignated from 3420.1-4 and amended........................33136
420.1-4 Redesignated as 3420.1-3; new 3420.1-4 redesignated from 3420.1-5 and amended........................33136
420.1-5 Redesignated as 3420.1-4 and amended; new 3420.1-5 redesignated from 3420.2-4 and revised..................33136
Corrected........................38131
420.1-6 Redesignated from 3420.2-5........................33137
420.1-7 Redesignated from 3420.2-6 and amended..............33137

43 CFR—Continued

47 FR Page

Chapter II—Continued
3420.1-8 Redesignated from 3420.2-7 and amended..............33137
3420.2 Revised........................33137
3420.2-1 Removed........................33137
3420.2-2 Removed........................33137
3420.2-3 Removed........................33137
3420.2-4 Redesignated as 3420.1-5 and revised..................33137
3420.2-5 Redesignated as 3420.1-6........................33137
3420.2-6 Redesignated as 3420.1-7........................33137
3420.2-7 Redesignated as 3420.1-8........................33137
3420.3 Removed; new 3420.3 redesignated from 3420.4............33138
3420.3-1 Removed; new 3420.3-1 redesignated from 3420.4-1 and amended........................33138
3420.3-2 Removed; new 3420.3-2 redesignated from 3420.4-2 and amended........................33138
3420.3-3 Removed; new 3420.3-3 redesignated from 3420.4-3 and amended........................33138
3420.3-4 Removed; new 3420.3-4 redesignated from 3420.4-4 and revised........................33138
(b)(2) corrected........................38131
3420.4-2 Redesignated as 3420.3-2........................33138
Redesignated from 3420.5-2.......33139
3420.4 Redesignated as 3420.3.... 33138
Redesignated from 3420.5.......... 33139
3420.4-1 Redesignated as 3420.3-1........................33138
Redesignated from 3420.5-1 and amended........................33139
3420.4-2 Redesignated as 3420.3-2 and amended..............33138
Redesignated from 3420.5.......... 33139
3420.4-3 Redesignated as 3420.3-3........................33138
Redesignated from 3420.5-3 and amended........................33139
3420.4-4 Redesignated as 3420.3-4........................33138
Redesignated from 3420.5-4 and amended........................33139
3420.4-5 Removed; new 3420.4-5 redesignated from 3420.5-5 and amended........................33139
Technical correction.................. 38131
3420.4-6 Removed........................33139

43 CFR—Continued

Chapter II—Continued	47 FR Page
3420.5 Redesignated as 3420.4; new 3420.5 redesignated from 3420.7	33139
3420.5-1 Redesignated as 3420.4-1; new 3420.5-1 redesignated from 3420.7-1 and amended	33139
3420.5-2 Redesignated as 3420.4-2; new 3420.5-2 redesignated from 3420.7-2 and amended	33139
Technical correction	38131
3420.5-3 Redesignated as 3420.4-3	33139
3420.5-4 Redesignated as 3420.4-4	33139
3420.5-5 Redesignated as 3420.4-5 and amended	33139
Technical correction	38131
3420.6 Removed	33139
3420.6-1 Removed	33139
3420.6-2 Removed	33139
3420.7 Redesignated as 3420.5	33139
3420.7-1 Redesignated as 3420.5-1	33139
3420.7-2 Redesignated as 3420.5-2	33140
Technical correction	38131
3422.1 Revised	33140
3422.1-2 Removed	33140
3422.2 (c)(10) revised	9010
Amended	33140
3422.3-1 Redesignated as 3422.3-2 and amended; new 3422.3-1 added	33140
3422.3-2 Removed; new 3422.3-2 redesignated from 3422.3-1 and amended	33140
3422.3-4 Amended	33140
3422.4 Revised	33141
3425.0-2 Amended	33141
3425.0-6 Removed	33141
3425.1-4 Amended	33141
3425.1-5 Revised	33141
3425.1-7 Amended	33141
3425.1-8 Amended	33141
3425.1-9 Added	33141
3425.2 Amended	33141
3425.3 Amended	33141
3425.4 Revised	33142
3427.0-1 Revised	33142
Technical correction	38131
3427.1 Revised	9010
Revised	33142
3427.2 (a)(1), (g), and (i) revised; (f) amended	9010

43 CFR—Continued

Chapter II—Continued	47 FR Page
Amended	33142
3427.4 Revised	9010, 33142
3427.5 Added	33142
3430.0-3 (c) removed	33143
3430.0-7 Revised	33143
3430.2-1 Amended	33143
3430.2-2 Removed; new 3430.2-2 redesignated from 3430.2-3 and amended	33143
3430.2-3 Redesignated as 3430.2-2	33143
3430.3-1 Amended	33143
3430.3-2 Amended	33143
3430.4-1 Amended	33143
3430.5-1 Amended	33143
3430.5-3 Revised	33143
3430.5-4 Revised	33143
3430.6-1 Revised	33144
3430.6-3 Removed; new 3430.6-3 redesignated from 3430.6-4 and amended	33144
3430.6-4 Redesignated as 3430.6-3	33144
3431.2 Amended	33144
3435.0-1 Amended	33144
3435.0-3 Amended	33144
3435.1 Amended	33144
3435.2 (b) revised; (c) and (d) amended	33144
3435.3-1 (b) amended; (c) revised; (d) redesignated as (e); new (d) added	33144
3435.3-2 (a) revised	33144
3435.3-3 (a) and (b) amended	33144
3435.3-5 Revised	33144
3435.3-6 (a) amended	33144
3435.4 Revised	33144
3436.0-1—3436.2-3 (Subpart 3436) Revised	33145
3437.0-1—3437.2 (Subpart 3437) Removed	33146
3440.1-4 (c)(3) amended	33146
3440.1-5 Removed; new 3440.1-5 redesignated from 3440.1-6 and amended	33146
3440.1-6 Redesignated as 3440.1-5 and amended; new 3440.1-6 added	33146
3451.1 (a)(3) and (b) removed; (c) through (e) redesignated as (b) through (d); new (b) amended	33146

43 CFR—Continued

47 FR Page

Chapter II—Continued

3451.2 (b) removed; (c) and (d) redesignated as (b) and (c) and amended; new (d) added; (e) revised....33146
3452.1-1 Revised....33147
3452.1-3 Revised....33147
3452.2-1 (a)(2) revised; (b) removed; (c) redesignated as (b)....33147
3452.3 (a) and (b) amended....33147
3453.1 Revised....33147
3453.1-1—3453.1-5 Removed....33147
3453.2-1 Amended....33147
3453.2-2 (a) and (b) revised; (e) and (g) amended....33147
3453.2-3 Revised....33147
3453.2-4 Revised....33147
Corrected....38131
3453.2-5 Removed; new 3453.2-5 redesignated from 3453.2-6 and revised....33147
3453.2-6 Redesignated as 3453.2-5 and revised....33148
3453.3-1 Revised....33148
453.3-2 (a) amended; (b) revised....33148
453.3-3 Amended....33148
453.3-4 Existing text designated as (a); (b) added....33148
Corrected....38131
461.0-7 Amended....33148
461.1 (a)(1) and (b)(1) amended; (c)(2)(iii) redesignated as (iv); new (c)(2)(iii), (i)(3), (k)(3), (l)(3), (m)(3) and (n)(3) added; (p)(1) and (q)(2) revised....33148
461.2 (b) amended....33149
461.3-1 (a) revised....33149
461.3-2 (a), (b), and (c) amended....33149
461.3-3 Removed....33149
461.4-1 Revised....33149
461.4-2 Revised....33149
461.5 Removed; new 3461.5 redesignated from 3461.6 and amended....33149
461.6 Redesignated as 3461.5 and amended....33149
465.0-2 Removed....33149
65.1 (a) amended....33149
65.2 Removed; new 3465.2 redesignated from 3465.3....33149
65.3 Redesignated as 3465.2....33149
65.2-1 Redesignated from 3465.3-1 and amended....33149

43 CFR—Continued

47 FR Page

Chapter II—Continued

3465.3-1 Redesignated as 3465.2-1 and amended....33149
3465.2-2 Redesignated from 3465.3-2....33149
3465.3-2 Redesignated as 3465.2-2....33149
3465.2-3 Redesignated from 3465.3-3 and amended....33149
3465.3-3 Redesignated as 3465.2-3 and amended....33149
3465.4—3465.6 Removed....33149
3470 Technical correctiom....38131
3471.2-1 (b) revised; (c) and (d) amended....33149
3471.2-2 (b) amended....33149
3471.3-1 Removed; new 3471.3-1 redesignated from 3471.3-2 and amended....33149
3471.3-2 Redesignated as 3471.3-1 and amended; new 3471.3-2 redesignated from 3471.3-3....33149
3471.3-3 Redesignated as 3471.3-2....33149
3471.4 Amended....33149
3472.1-2 (a) amended; (e) revised....33150
3472.1-3 (b)(1) revised....33150
3472.2-2 (c) revised; (f) and (g) added....33150
3472.2-5 Amended....33150
3473.1-1 Amended....33150
3473.1-2 (b) amended....33150
3473.2-1 (a)(3) revised....33150
3473.3-1 (b) amended; (d) added....33150
3473.3-2 (a)(3), (b), (c), and (d) revised....33151
3473.4 (a) amended; (c) through (e) removed....33151
3474.1 (a)(2) and (c) revised....33151
3474.2 (a) revised; (b) amended; (c) added....33151
3473.3 (b) revised; (c) removed....33151
3475.1 Redesignated as 3475.2; new 3475.1 added....33151
3475.2 Redesignated as 3474.3; new 3475.2 redesignated from 3475.1....33151
3475.3 Redesignated as 3475.4; new 3475.3 redesignated from 3475.2....33151
3475.4 Redesignated as 3475.5 and revised; new 3475.4 redesignated from 3475.3....33151

43 CFR—Continued

47 FR Page

Chapter II—Continued
3475.5 Redesignated as 3475.6 and revised; new 3475.5 redesignated from 3475.4 and revised.....33151
3475.6 Redesignated from 3475.5 and revised.....33151
3830 (Subpart 3833) Note added.....56304
3833.0-1 Revised.....56304
3833.0-2 Revised.....56304
3833.0-3 (a) and (b) revised; (c) amended; (d) removed; (e) redesignated as (d).....56304
3833.0-5 (a), (b), (c), and (g) amended; (i) revised; (j) through (o) added.....56304
3833.1-1 Revised.....56305
3833.1-2 (b) and (d) removed; (c) redesignated as (b); new (b)(6) removed, and (b)(7) and (8) redesignated as (b)(6) and (7); heading, (a), and new (b)(5) and (6) revised.....56305
3833.1-3 Revised.....56305
3833.2-1 Heading amended; (a) revised; (b)(1) and (2) redesignated as (a)(1) and (2) and revised; (c) and (d) redesignated as (b)(1) and (c) and amended; new (b)(2) and (d) added.....56305
3833.2-2 Heading, (a)(1), and (b) introductory text and (1) amended; (a) introductory text revised.....56306
3833.2-3 Revised.....56306
3833.2-4 Heading.....56307
3833.4 (b) redesignated as (c) and revised; new (b) and (d) added.....56307
3833.5 (b) amended; (d) revised.....56307

1983

43 CFR

48 FR Page

Chapter II
Chapter II Interim management policy and guidelines amended.....31854
1600 Revised.....20368
Revision comment time extended.....26314
1821.2-1 (d) amended...36104, 40724, 42984
1881.0-5 (b)(1) amended.....42817

43 CFR—Continued

48 FR Page

Chapter II—Continued
2200.0-5 (h) and (i) amended.....16888
2200.3 (e) removed.....16888
2201.1 (a) and (e) amended.....16888
2201.2 (a) amended; (e) added.....16888
2201.3 Revised.....16888
2510—2560 (Group 2500) Note added.....40889
2650.5-1 (b) interim waiver and policy establishment.....54483
2710—2780 (Group 2700) Note added.....40889
2800—2880 (Group 2800) Note added.....40889
2910—2920 (Group 2900) Note added.....40889
3000—3040 (Group 3000) Revised.....33659
3000 Revised.....33659
3000.4 Amended; interim.....1305
Amended; final.....37655
3040 Revised.....33660
3100—3150 (Group 3100) Note amended.....40889
3100 Contingent right stipulation final decision.....3370
Revised.....33662
Evidence of qualification.....37656
3102.4 Corrected.....39225
3102.5 Corected.....39225
3103.2-2 (d) corrected.....39225
3103.4-1 (a) corrected.....39225
3108.4 Corrected.....39225
3110 Contingent right stipulation final decision.....3370
Partial suspension removed.....8280
Revised.....33675
3111.3-4 (d) corrected.....39225
3120 Contingent right stipulation final decision.....3370
Revised.....33680
3130 Contingent right stipulation final decision.....3370
3135.1—3135.1-5 (Subpart 3135) Heading revised.....413
3135.1-6 Added.....413
3140.1-4 (a) and (c) amended.....33682
3140.7 Amended.....33682
3141.0-1—3141.7 (Subpart 3141) Added.....7422
3150 Removed.....33682
3160 Redesignated from 30 CFR Part 221.....36583
Note amended.....36584
3160.0-1 Revised.....36583
3160.0-2 Revised.....36584

43 CFR—Continued

48 FR Page

Chapter II—Continued

3160.0-3 Added..............36583
3160.0-4 Revised..............36583
3160.0-5 Amended..............36584
3160.0-7 Revised..............36584
3161.1 Amended..............36584
3161.2 Revised..............36584
3162.1 Amended..............36584
3162.2 (a), (b), and (c) amended..............36585
3162.3 (a) and (b) amended..............36584
3162.3-1 (a), (c), (e), and (f) amended..............36585
3162.3-2 (a) amended..............36585
3162.3-3 Amended..............36585
3162.3-4 (a), (b), and (c) amended..............36585
3162.4 Added..............36583
3162.4-1 (b) and (c) amended..............36585
3162.4-2 (a) and (c) amended..............36585
3162.4-3 Introductory text, (d), and (f) revised..............36586
3162.5 Added..............36583
3162.5-1 (a), (b), (c), and (d) amended..............36585
3162.5-2 (b) and (d) amended..............36585
3162.5-3 Amended..............36585
3162.6 (a) and (b) amended..............36585
3162.7 Added..............36583
3162.7-1 (b) and (e) amended..............36585
3162.7-2 (a) and (b) amended..............36585
3162.7-3 (a) and (b) amended..............36585
3162.7-4 (a) and (b) amended..............36585
3162.8 (d) amended..............36585
3163.1 Amended..............36586
3163.3 (a), (b), (d), and (j) amended..............36586
3163.4 Amended..............36586
3163.5 (a), (b), and (c) amended..............36586
3164.1 (b) table added..............48921
(b) table corrected..............56226
3164.2 (a) and (b) amended..............36586
3164.3 (b) amended..............36586
3165.1 (a), (b), and (c) amended..............36586
3165.1-1 Revised..............36586
3165.2 Amended..............36586
3165.3 Amended..............36586
3165.4 Revised..............36586
3180 Redesignated from 30 CFR Part 226 and Note added..............36587
Redesignation table corrected..............44787
3180.0-1 Revised..............36587
3180.0-2 Revised..............36587
3180.0-3 Added..............36587
3180.0-5 Amended..............36587

43 CFR—Continued

48 FR Page

Chapter II—Continued

3181.1 Amended..............36587
3181.2 Amended..............36587
3181.4 (b) amended..............36587
3182.1 Amended..............36587
3183.3 Amended..............36587
3183.3-1 Amended..............36587
3183.6 Amended..............36587
3184.1 Amended..............36587
3185.1 Amended..............36587
3186.1 Amended..............36588
3200—3250 (Group 3200) Note added..............40889
3200 Note added..............24368
Lease form and assignment form modified..............28277
3200.0-6 Revised..............17044
3201.1-5 (a) designation and (b) removed..............17044
3201.2 (d)(3) and (4) removed..............17044
(e) removed..............24368
3202.2 Revised..............24368
3202.2-1 Revised..............24368
3203.5 Revised..............17044
3203.7 Redesignated from 3204.4..............17045
3203.8 Redesignated from 3204.5..............17045
3203.9 Redesignated from 3204.3..............17045
3204.1 Revised..............17045
3204.2 Removed..............17045
3204.3 Redesignated as 3203.9..............17045
3204.4 Redesignated as 3203.7..............17045
3204.5 Redesignated as 3203.8..............17045
3204.6 Removed..............17045
3205.3-1 Amended..............6337, 17045
3205.3-3 Removed..............17045
3206.8 Amended..............17045
3209.3 Amended..............17045
3210 Note added..............24368
3210.1 Revised..............6337
3210.2-1 (d) removed; (e) redesignated as (d)..............17045
Amended..............24368
3210.2-2 Amended..............17045
3211.1—3211.3 (Subpart 3211) Removed..............6337
3220 Note added..............24368
3220.2 Removed..............24368
Redesignated from 3220.3..............24369
3220.3 Redesignated as 3220.2; new 3220.3 redesignated from 3220.4..............24369

43 CFR—Continued

48 FR Page

Chapter II—Continued

3220.4 Redesignated as 3220.3; new 3220.4 redesignated from 3220.5 24369
3220.5 Redesignated as 3220.4; new 3220.5 redesignated from 3220.6 24369
3220.6 (d) amended 17045
Redesignated as 3220.5 24369
3230 Removed 17045
3240 Note added 24368
3240.1-1 (c) removed 17045
3241.1-2 Removed 24369
3241.2-1 Amended 17045
3241.2-3 (b) amended 24369
3241.7-1 (c) removed 24369
3244.2-1 Amended 6337
3250 Note added 24368
3250.0-1—3250.9 (Subpart 3250) Heading revised; Note added 17045
3250.0-1 Amended 17045
3250.0-3 Amended 17045
3250.0-5 (d) and (e) revised 17046
3250.0-6 Amended 17046
3250.1-1 Introductory text, (d)(2) and (3) revised 17046
3250.3 Revised 17046
3250.5-1 (a) and (b) amended 17046
3250.5-2 Amended 17046
3250.6-1 Revised 17046
3250.6-2 (a) and (c) amended 17046
3250.6-3 Amended 17046
3250.7 (a) and (c)(2) revised 17046
3260 Redesignated from 30 CFR Part 270 44788
Notes added 44788
Authority citation revised 44792
3260.0-1 Revised 44788
3260.0-2 Revised 44788
3260.0-3 Added 44788
3260.0-5 (a) through (d), (g), (h), (i), and (o) removed; (e), (f), (j) through (n), and (p) through (w) redesignated as (a), (b), (c) through (o); new (e) amended 44788
3261.1 Revised 44789
3261.2 Revised 44789
3261.3 (a)(2) and (3) and (b) introductory text, (2), (3), and (4) amended 44789
3261.4 Amended 44789
3261.5 Amended 44789
3261.6 Amended 44789
3261.7 Amended 44789

43 CFR—Continued

48 FR Page

Chapter II—Continued

3261.8 (a), (b), (c), and (d) amended 44789
3262.1 (a) and (c) amended 44789
3262.2 (a) and (b) amended 44789
3262.2-1 Amended 44789
3262.3 (a) and (b) amended 44790
3262.4 Introductory text, (i), and flush paragraph following (k) amended 44790
3262.4-1 Introductory text, (a), (c), (i), (j), (k), and flush paragraph following (k) amended 44790
3262.4-2 Amended 44790
3262.5-1 (a), (b), and (c) amended 44790
3262.5-2 (a) and (b) amended 44790
3262.5-3 Amended 44790
3262.5-5 Amended 44790
3262.6 Amended 44790
3262.6-1 Amended 44790
3262.6-2 Amended 44790
3262.6-3 Amended 44790
3262.7 Amended 44790
3262.8 Amended 44790
3262.9 Revised 44790
3263.1 Amended 44791
3263.2 Amended 44791
3263.3 Amended 44791
3264.1 (a) and (b) amended 44791
3264.2 (a) amended 44791
3264.2-1 (a), (b), (c), (d), (g), and (h) amended; (e) revised 44791
3264.2-2 (a) through (g) amended 44791
3264.2-3 Amended 44791
3264.2-4 Introductory text and (f) amended 44791
3264.2-5 Introductory text amended 44792
3264.3 Amended 44792
3264.4 (a), (b) introductory text and (6), (c), and (d) amended 44792
3265.1 (a) revised 44792
3266.1 Revised 44792
3280 Redesignated from 30 CFR Part 271 44792
Note added 44792
Authority citation revised 44794
3280.0-1 Revised 44792
3280.0-2 Revised 44792
3280.0-3 Added 44792

43 CFR—Continued

46 FR Page

Chapter II—Continued

3280.0-5 (d) removed; (e) through (j) redesignated as (d) through (i); (k), (l), (m), and note removed..........44792

3281.1 Amended..........44792

3281.2 Amended..........44792

3281.3 Amended..........44793

3282.1 Amended..........44793

3283.1 Revised..........44793

3283.2 Revised..........44793

3283.2-1 Revised..........44793

3283.3 Revised..........44793

3283.4 Revised..........44793

3283.5 Revised..........44793

3284.1 Amended..........44793

3285.1 Amended..........44793

3286.1 Heading revised; amended..........44793

3286.1-1 Heading revised..........44794

3286.1-2 Heading revised; amended..........44794

3286.2 Heading revised..........44794

3286.3 Heading revised; amended..........44794

3286.4 Heading revised; amended..........44794

3410.3-4 (d) added; interim..........1305
  Heading corrected..........3987
  (d) added; final..........37655

3420.2 (a)(1), (4), and (f) amended; interim..........1305
  (a)(1) and (4) and (f) amended; final..........37655

3420.3-4 (b)(1) amended; interim..........1305
  (b)(1) amended; final..........37655

3420.4-3 (c) added; interim..........1305
  Heading corrected..........3987
  (c) added; final..........37655

3420.6 Added; interim..........1305
  Added; final..........37655

3425.1-4 (c) added; interim..........1305
  (c) added; final..........37655

3425.1-6 (c) added; interim..........1305
  (c) added; final..........37655

3427.2 (k) added; interim..........1305
  (k) added; final..........37656

3430.5-4 (b) amended; interim..........1305
  (b) amended; final..........37656

3435.3-1 (b) revised; interim..........1305
  (b) revised; final..........37656

3435.3-3 (a) amended; interim..........1305
  (a) amended; final..........37656

3451.1 (e) added; interim..........1305
  (e) added; final..........37656

3452.2-2 Amended; interim..........1305

43 CFR—Continued

46 FR Page

Chapter II—Continued

  Amended; final..........37656

3453.3-3 Amended; interim..........1305
  Amended; final..........37656

3461.1 (g) revised..........54820

3480 Redesignated from 30 CFR Part 211..........41589
  Note redesignated from 30 CFR 211.2-1 and amended; new Note added..........41589

3480.0-5 (a)(2), (3), and (4) revised; (a)(5), (15), (16), (28), (29), and (41), and (b) removed; (a)(6) through (14), (17) through (27), (30) through (40), and (42), and (c) redesignated as (a)(5) through (13), (14) through (24), (25) through (34), (36), and (b); new (a)(10) revised; new (a)(16), (17), (21), and (26) amended; new (a)(35) added..........41589

3480.0-6 (a) introductory text, (b), (c), (d) introductory text, (8), (10), and (13)(iii) amended; (e) removed..........41590

3481.1 (a), (b), (d), (e) and (f) amended..........41590

3481.2 (a) and (b)(1), (2), and (3) amended..........41590

3481.3 (b) amended..........41590

3482.1 (a)(1), (2), (3)(iii), (vii), and (x), (b), and (c) introductory text and (7) amended..........41590

3482.2 (a)(1), (2), and (3), (b) heading, (1), and (2), and (c)(1) and (2) amended..........41591

3482.3 (a) through (g) amended..........41591

3483.1 (a)(1), (2), (b)(1) introductory text, and (i) introductory text, (C) and (ii) amended..........41591

3483.2 (b) amended..........41591

3483.3 (a) introductory text, (1), and (2), and (b) introductory text, (1), (2), (3) and (4) amended..........41591

3483.4 (a), (b), (c) introductory text, (2), and (3), (f), and (g) amended..........41592

3483.5 (c), (d), and (e) amended..........41592

43 CFR—Continued

Chapter II—Continued	48 FR Page
3484.1 (a)(2), (3), (4), and (5), (b)(1), (2), (3), and (5), (c)(1), (2), (3), and (4)(i) and (ii), (5), (6)(i), (ii), and (7), (d)(3), (5), and (6), and (e)(1) amended	41592
3484.2 (b) amended	41592
3485.1 (a), (b)(4), (9), and (10), (c), (d)(3), (e), and (f) amended.	41592
3485.2 (a), (c)(1), (2) introductory text and (ii), (3), and (4), (e), (f), (g) introductory text and (2) introductory text, (h), and (j) amended	41593
3485.3 (b) and (d) amended	41593
3486.1 (a) and (b) amended	41593
3486.2 (a) amended	41593
3486.3 (a) through (e) amended	41593
3486.4 Revised	41593
3487.1 (a), (b), (c) introductory text, (4), (5), and (6), (d)(1) and (2), (e) introductory text, (1), (2), and (7), (f) introductory text, (3), and (4), (g)(1), (3), and (4), and (h)(1) and (2) amended	41594
3500—3560 (Group 3500) Note added	40890
3570 Redesignated from 30 CFR Part 231; Note added	36588
3570.0-1 Heading added; text amended	36588
3570.0-2 Heading (a), (b) introductory text, (3), (4), and (7), (c), (d), and (e) amended	36589
3570.0-5 (b) and (c) revised; (j) amended; (k) added	36589
3570.0-7 Amended	36589
3570.0-8 Amended	36589
3570.0-9 Heading added; text amended	36589
Cross reference removed	44795
3571.1 (a), (b), (d), (e), and (f) amended	36589
(e) amended; (f) revised	44795
3571.1-1 Added	44795
3572.1 (a), (b), (c), (d)(3), and (e) amended	36589
3572.2 Amended	36589
3572.3 (a), (b), and (c) amended	36589
3573.1 (a), (b), (c), and (d) amended	36589
3574.1 (a) and (b) amended	36590
3574.2 Amended	36590

43 CFR—Continued

Chapter II—Continued	48 FR Page
3574.3 (a) amended	36590
3574.4 (b), (c), and (d) amended	36590
(b) amended	44795
3574.5 Amended	36590
3575.1 (a) and (b) amended	36590
3575.2 Amended	36590
3576.2 Amended	36590
3577.1 Cross reference amended	44795
3577.2 (a) introductory text, (2) introductory text, and (iii), and (b) amended	36590
(a)(2)(iii) amended	44795
3577.3 Amended	36590
3578.1 Amended	36590
3578.2 Amended	36590
3578.4 (a), (b), and (c) amended	36590
3578.5 Amended	36590
3600 Revised	27011
3610 Added	27013
3620 Added	27015
3710—3740 (Group 3700) Note added	40890
3800—3870 (Group 3800) Note added	40890
3800 (Subpart 3809) Note added	8816
3809.0-5 (b) and (k) amended	8816
3809.1-3 (a) and (b) amended; (f) revised	8816
3809.1-4 (b)(1) revised; (b)(5) removed; (b)(6) redesignated as new (b)(5) and amended; (c) added	8816
3809.2-1 (c) amended	8816
3809.2-2 (e)(2) amended	8816
3809.4 (b) amended	8816
3833.0-5 (m) and (o) corrected	7179
3833.1-2 (b)(6) corrected	7179
3833.2-1 (b)(1) and (d) corrected	7179
3833.2-3 (c)(3) correctly removed; (c)(2) amended	7179
3833.4 (a) corrected	7179

1984

43 CFR

Chapter II	49 FR Page
1821.2-1 (d) amended	44473

43 CFR—Continued

49 FR Page

Chapter II—Continued

1821.6 Removed; new 1821.6 redesignated from 1821.7; eff. 10-9-84....35300

1821.6-1 Removed; new 1821.6-1 redesignated from 1821.7-1; eff. 10-9-84....35300

1821.6-2 Removed; new 1821.6-2 redesignated from 1821.7-2; eff. 10-9-84....35300

1821.6-3—1821.6-6 Removed; eff. 10-9-84....35300

1821.7 Redesignated as 1821.6; eff. 10-9-84....35300

1821.7-1 Redesignated as 1821.6-1; eff. 10-9-84....35300

1821.7-2 Redesignated as 1821.6-2; eff. 10-9-84....35300

1860 Heading revised; eff. 10-9-84....35297

1864.0-1—1864.4 (Subpart 1864) Added; eff. 10-9-84....35297

1865.0-1—1865.4 (Subpart 1865) Added; eff. 10-9-84....35299

2650.7 (d)(2) amended....6373

2651.2 (a)(4) amended....6373

2710.0-6 (b) amended; (c) revised....29014

(c)(1) introductory text corrected....29795

2711.1-1 (c) added....29015

2711.1-2 (b) revised; (d) redesignated as (f); new (d) and (e) added....29015

2711.1-3 Revised....29015

2711.2 (b) amended....29015

2711.3-1 Heading revised; (c) and (d) amended....29015

(c) corrected....29795

2711.3-2 Heading and (b) revised; (a)(1)(ii) amended; (c) and (d) redesignated as (d) and (e); (a)(1)(iii) and new (c) added....29015

2711.3-3 Added....29015

(a)(1) correctly designated....29796

2711.5-3 Amended....29016

2880.0-7 (b) amended; temporary....31209

2883.1-1 Revised; temporary....31209

3000.0-5 Amended....2113

3045.4 (c) amended....2113

3100—3150 (Group 3100) Remittance procedures....10120

3100.0-3 (d) amended....2113

3101.1-2 Amended....2113

3101.2-5 Amended....2113

43 CFR—Continued

49 FR Page

Chapter II—Continued

3101.8 Amended....2113

3102.4 Amended....2113, 26920

3103.1-1 Revised....11637

3103.1-2 (a) amended....2113

(a) revised....11637

(a) amended....39330

3103.2-1 (b) redesignated as (c); new (b) added....26920

3103.2-2 Introductory text nomenclature change and amended....11637

(j) and (k) added....30447

3103.3-1 (a) revised....30448

3103.3-2 (c) amended....11637

(d) added....30448

3103.4-1 (d) added....30448

3105.4-1 Amended....2113

3106.7-3 Interpretation....2896

Interpretation rescinded....10929

3107.1 Amended....2113

3107.6 Nomenclature change; (a) removed; (b) and (c) redesignated as (a) and (b); new (b) amended....30448

3108.2 Heading revised....30448

3108.2-1 (a) nomenclature change; (b) amended....11637

Heading revised; (c) removed....30448

3108.2-2 Added....30448

3108.2-3 Added....30449

3108.2-4 Added....30449

3110.1-3 (a) amended....30450

3110.3 (c) amended....30450

3111.1-1 (a) amended...2113, 20653, 30450

3111.2-1 (e) added....30450

3111.2-2 (d) amended....20654

3111.3-1 (c) amended....2113

3111.3-4 (a) amended....2113

3112.1-3 Revised....26920

3112.2-1 (g) introductory text, (1), and (2) amended....2113

(c) revised; (g) amended....26920

3112.2-2 Revised....26920

3112.3 (a) introductory text revised; (a)(2), (4), (b), (d), (f), and (h) amended....2113

(c) and (h) amended....26920

3112.4-1 (a) amended....2114

3112.4-2 Heading revised....2114

3112.5-1 (c) amended....2114

3112.6-1 (a) and (b)(1) amended....26920

3112.7 Amended....2114

3120.3 Amended....2114

43 CFR—Continued

49 FR Page

Chapter II—Continued

3160 Authority citation; eff. 10-22-84....37363
3160.0-5 Amended; eff. 10-22-84....37363
3161.3 Added; eff. 10-22-84....37363
3162.1 Existing text designated as (a); (b) and (c) added; eff. 10-22-84....37364
3162.4-1 (a) amended; (c) revised, (d) added; eff. 10-22-84....37364
3162.7-1 (c) and (d) revised: (f) added; eff. 10-22-84....37364
3162.7-2 "(a)" designation removed; (b) removed; eff. 10-22-84....37364
3162.7-3 "(a)" designation removed; (b) removed; eff. 10-22-84....37364
3162.8 (e), (f) and (g) added; eff. 10-22-84....37364
3163.3 Introductory text and (e) amended; eff. 10-22-84....37365
3163.4 Removed; eff. 10-22-84....37365
3163.4-1 Added; eff. 10-22-84....37365
3163.4-2 Added; eff. 10-22-84....37367
3163.5 Heading, (a) and (b) revised; (c) amended; eff. 10-22-84....37368
3163.6 Added; eff. 10-22-84....37368
3200—3250 (Group 3200) Remittance procedures....10120
3205.1-1 Revised....11637
3205.1-2 Revised....11637
(a) amended....39330
3400—3470 (Group 3400) Remittance procedures....10120
3473.1-1 Revised....11638
3473.1-2 Revised....11638
(a) amended....39330
3500—3560 (Group 3500) Remittance procedures....10120
3500 Heading revised....17899
3500.0-3 (a)(5) revised; (b)(2) amended....17899
3500.0-5 Revised....17900
3500.1-1 Revised....17900
3500.3 Added....17900
3501.1-2 (b)(1) heading revised; (b)(1)(i) and (2) amended....17900
3501.1-4 (b) introductory text, (2), and (4) amended; (b)(5) revised....17900
3501.2-1 (c) amended....17900
3501.2-3 (a)(1) and (2) heading amended....17900

43 CFR—Continued

49 FR Page

Chapter II—Continued

3501.2-5 (b)(2) heading revised; (b)(2)(i) amended....17900
3501.2-6 (a) revised; (d) amended....17900
3501.3-2 (a) and (b)(2) amended....17901
3502.2 Revised....17901
3503.1-1 Revised....11638
3503.1-2 Revised....11638, 17901
(a) amended....39330
3503.2-1 Amended....17901
3503.3-1 (a) heading, (b)(4), and (5) heading revised; (a) and (b)(5) amended; (d) removed....17901
3503.3-2 Heading, (a)(1)(ii) heading, (b), (c)(3) heading, and (d) heading, (1), and (2) introductory text revised; (a)(1)(ii), (d)(2)(i), and (e)(3) and (5) amended; (e)(6) removed....17901
3504.1-1 Revised....17901
3504.2-1 Revised....17902
3504.2-2 Revised....17902
3504.2-5 Revised....17902
3504.3—3504.3-5 Removed....17902
3504.5-1 Amended....17902
3504.6-1 Amended....17902
3504.7-1 Revised....17902
3504.8-2 Revised....17902
3504.9 Removed....17902
3504.9-1 Removed....17902
3505.1-2 Heading revised; text amended....17902
3505.3 Revised....17902
3509—3509.1 (Subpart 3509) Removed....17902
3510.0-3 Revised....17902
3510.1-1 Revised....17902
3510.1-2 Revised....17902
3511.1-3 (c) amended....17902
3511.3-1 (a) and (b)(1) revised; (b) introductory text amended....17902
3511.3-3 Amended....17902
3511.4-2 (a)(1)(ii) amended....17903
3520.1-1 Revised....17903
3520.2-1 Revised....17903
3520.2-4 Removed....17903
3521.1-1 Revised....17903
3521.1-3 Removed....17903
3521.1-4 Removed....17903
3521.1-5 Removed....17903
3521.2-1 Revised....17904

43 CFR—Continued

49 FR Page

Chapter II—Continued

3521.2-2 Revised....17904
3521.2-3 (b) added....17904
3521.2-5 (a) amended....17904
3521.3-2 (a)(2) amended....17904
3522.1-2 Revised....17904
3524.1-2 Revised....17904
3524.1-3 Revised....17904
3524.1-4 Removed....17905
3524.2 Revised....17905
3524.2-1 Removed....17905
3526.0-1 Amended....17905
3526.0-3 (e) redesignated as (g); new (e) and (f) added....17905
3526.2 (b) revised; (d)(1) amended....17905
3540.1-1 Amended....17905
3550.1-1 (a)(1) heading and (2) heading revised; (d) amended....17905
3561.3-3 Amended....17905
3562.4-1 (a) amended....17905
3562.5 Amended....17905
3562.6 Amended....17905
3562.8-1 (b) amended....17905
3563.1-3 (c) amended....17905
3563.1-4 (f) amended....17905
3563.2-3 (b) amended....17905
3563.2-4 (g) amended....17905
3564.7-5 Amended....17905
3565.0-3 Amended....17905
3566.4 Removed....17905
3568.3-1 Amended....17905
3833.4 (e) added....30450

1985

43 CFR

50 FR Page

Chapter II

1821.2-1 (d) amended...36056, 38812,46044
1881.0-3 Amended....1305
1881.0-5 (b)(1)(i) and (ii), (2) amended; (c)(1)(viii) added....1305
1881.1-2 (a) amended; (f) added....1305
1881.1-3 (d) amended....1305
1881.1-5 Added....1305
2550 Removed....16084
2650.0-5 (v) added....15547
2650.5-1 (b) revised....15547
2651.4 (b) amended....15547
2740 Authority citation added....50300
2740.0—2740.0-7 (Subpart 2740) Authority citation removed....50300
2740.0-5 (d) and (e) added....50300

43 CFR—Continued

50 FR Page

Chapter II—Continued

2740.0-6 (c), (d), (e), and (f) added....50300
2741.1—2741.8 (Subpart 2741) Authority citation removed....50300
2741.3 Redesignated as 2741.4 and (c) added; new 2741.3 added....50300
2741.4 Redesignated as 2741.5; new 2741.4 redesignated from 2741.3 and (c) added....50300
2741.5 Redesignated as 2741.6; new 2741.5 redesignated from 2741.4....50300
(f) amended; (h) and (i) revised....50301
2741.6 Redesignated as 2741.7; new 2741.6 redesignated from 2741.5....50300
(a), (b), and (c) amended....50301
2741.7 Redesignated as 2741.8; new 2741.7 redesignated from 2741.6....50300
(d) amended....50301
2741.8 Redesignated as 2741.9; new 2741.8 redesignated from 2741.7....50300
2741.9 Redesignated from 2741.8....50300
2742.1—2742.5 (Subpart 2742) Authority citation removed....50301
2742.1 Redesignated as 2742.2; new 2742.1 added....50301
2742.2 Redesignated as 2742.3; new 2742.2 redesignated from 2742.1....50301
2742.3 Redesignated as 2742.4; new 2742.3 redesignated from 2742.2....50301
2742.4 Redesignated as 2742.5; new 2742.4 redesignated from 2742.3....50301
2742.5 Redesignated from 2742.4....50301
2780 Authority citation revised....46771
2781.0-3—2781.6 (Subpart 2781) Removed....46771
2781.0-3—2781.9 (Subpart 2781) Redesignated from 2783.0-3—2783.9....46771
2783.0-3—2783.9 (Subpart 2783) Redesignated as 2781.0-3—2781.9 (Subpart 2781)....46771
2784.0-3—2784.9 (Subpart 2784) Removed....46771

43 CFR—Continued

50 FR Page

Chapter II—Continued

2882.1 (c) amended; temporary.....1309
2883.1-1 (c) amended; temporary.....1309
2912.4—2912.4-2 Removed.....50301
2914.0-3—2914.0-7 (Subpart 2914) Removed.....16084
3103.2-2 Introductory text amended.....3514
3110.1-3 (a) amended; (d) added.....2049
3201.2 (a) amended (eff. 12-26-85).....38813
3205.2 (b) amended (eff. 12-26-85).....38813
3400.0-5 (k), (m), (v), (w), (x), (z) (aa) and (hh) amended.....8626
3410.2-1 (a)(3) and (c)(1) amended.....8626
3410.2-2 (a) amended.....8626
3410.3-1 (c), (f), and (g)(2) amended.....8626
3410.3-3 Amended.....8626
3410.3-4 (b) and (c) amended.....8626
3410.4 (b) amended.....8626
3420.1-2 (b) amended.....8626
3420.1-4 (b)(3) and (e)(1) amended.....8626
3420.2 (a)(4)(ii) amended.....8626
3422.1 (a) and (b) amended.....8626
3430.6-3 Amended.....8627
3430 Authority citation revised.....42022
3435.4 (c) amended.....8627
3436.1-2 (f) amended.....42023
3436.2-3 (f) removed.....42023
3450 Authority citation revised.....42023
3451.2 (e) amended.....8627
3452.1-1 Amended.....8627
3453.3-1 (a)(7) amended.....42023
3461.5 (a) amended.....8627
3465.1 (a) amended.....8627
3465.2-1 Amended.....8627
3465.2-2 (a) amended.....8627
3465.2-3 Amended.....8627
3472.1-1 (e) amended.....8627
3473.2 (c)(1) and (2) amended.....8627
3473.3-2 (a)(3) and (4), (b) and (d) amended.....8627
3475.5 Introductory text amended.....8627
3475.6 (a) amended.....8627
3487.1 (a) revised; interim.....40199

1986

43 CFR

51 FR Page

Chapter II

1784.0-3 (b) revised.....39529
1784.3 (b) revised.....39529
1784.6-3 Removed.....39530
1784.6-4 (b) amended; (d) and (e) redesignated as (e) and (f); new (e) added.....39530
1784.6-5 (f) removed.....39530
1821.2-1 (d) amended.....23547, 34981
(d) corrected.....26248
2200 Authority citation revised.....12612
2203.0-6—2203.5 (Subpart 2203) Added.....12612
2510 Authority citation added.....34602
2514.0-5—2514.5 (Subpart 2514) Removed.....34602
2515.0-3—2515.8-9 (Subpart 2515) Removed.....34602
2624.0-1—2624.2 (Subpart 2624) Removed.....3599
2640 Revised.....26894
2710—2780 (Group 2700) Note revised.....9657
2720.0-5 (d) added.....9657
2720.0-6 Added.....9657
2720.1-1 Introductory text, (a), and (b) redesignated as (a) introductory text, (1), and (2); new (b) added.....9657
2720.1-2 (d)(3) amended.....9658
2720.1-3 (b)(2), (c), (d), and (e) amended.....9658
2741.5 (h)(1) corrected.....1795
2800.0-1 Amended.....6543
2800.0-3 Revised.....6543
2800.0-5 (h) revised.....6543
2801.4 Added.....6543
2880.0-7 (b) amendment (49 FR 31209) confirmed.....31765
2882.1 (c) amendment (50 FR 1309) confirmed.....31765
2883.1-1 Revisions (49 FR 31209 and 50 FR 1309) confirmed.....31765
2910 Authority citation added.....3599
revised.....40809
2911.0-1—2911.2-4 (Subpart 2911) Revised.....40809
2911.2-3 (b) corrected.....45986
2911.2-4 Corrected.....45986
2913.0-7—2913.5 (Subpart 2913) Removed.....3599
3102.5 Amended.....43921
3110 Determination.....5331

43 CFR—Continued

51 FR Page

Chapter II—Continued
3140 Authority citation added......7276
3142.0-1—3142.3 (Subpart 3142) Added......7276
3180 Authority citation revised......34603
3180.0-5 Amended......34603
3183.1 Amended......34603
3183.6 Amended......34603
3186.1 Amended......34603
3186.1-2 Amended......34604
3186.3 Amended......34603
3400 Authority citation revised......18887
3400.0-5 (rr) added......43921
3400.4 (d), (e), and (f) redesignated as (e), (f), and (g); new (d) added......18887
3400.6 Added......18887
3420 Authority citation revised......18888
3420.1-2 Heading revised; (a), (b), and (c) amended......18888
3420.1-4 (f) added......18888
3420.1-8 Existing text designated as (a); (b) added......18888
3420.3-4 (b)(1) amended......18888
3422.1 (c)(2) revised......18888
3422.1-1 Removed......18888
3460 Authority citation revised......18888
3461.3-1 (a)(2) redesignated as (a)(3); new (a)(2) added......18888
3470 Authority citation revised......34218
3472.1-2 (e) amended......34218
(e) revised......43922
3487.1 (a) revised......13229
3500—3590 (Group) Revised......15212
3500 Revised......15213
3500.0-3 (c)(3) corrected......25204
3501.1-2 (a)(1) corrected......25204
3502.1 (d) added......43923
3508.2 (a) introductory text corrected......25204
3510 Revised......15222
3512.3-3 Introductory text correctly revised......25204
3520 Revised......15228
3521.6 (c) and (d) corrected......25204
3527.1-2 (a) corrected......25204
3530 Added......15233
Authority citation corrected......25204
3531.7 (d) corrected......25204
3540 Revised......15238
3544.4-4 Corrected......25204

43 CFR—Continued

51 FR Page

Chapter II—Continued
3546.5 (a) designation correctly removed......25204
3550 Revised......15243
3560 Revised......15248
3560.0-3 Corrected......25204
3560.5 Corrected......25204
3562.1 Corrected......25204
3565.3 (c)(1) corrected......25204
3570 Redesignated as Part 3590......15212
Added......15254
3574.3-3 (f) corrected......25204
3580 Added......15256
3581.4-1 Corrected......25204
3582.2-1 (b) and (c) corrected......25204
3582.2-2 (b)(1) and (d) corrected......25204
3583.5 Corrected......25204
3584.3 Corrected......25205
3585.4-1 Corrected......25205
3585.8 (a) corrected......25205
3590 Redesignated from Part 3570......15212
3610 Authority citation revised......22079
3610.2-1 (d) added......22080

1987

43 CFR

52 FR Page

Chapter II
1784.3 (b) (4) and (5) correctly revised......5284
2090 Authority citation added...12175, 13085
2091.0-1—2091.9-3 (Subpart 2091) Revised......12175
2091.3-1 (b) corrected......13563
2091.7-1 (b)(1) (i) and (ii) corrected......36575
2096.0-3—2096.2-8 (Subpart 2096) Removed......13085
2800.0-5 (o) through (t) added......25808
2802.1 (c) amended......25808
2802.4 (a) amended......25808
2802.5 (a)(1) amended......25808
2803.1-1 Removed......25808
2803.1-2 Revised......25818
(a), (c)(3)(i), and (d) corrected...36576
2803.1-3 Redesignated as 2803.1-4; new 2803.1-3 added......25820

43 CFR—Continued

Chapter II—Continued	52 FR Page
2803.1-4 Redesignated as 2803.1-5; new 2803.1-4 redesignated from 2803.1-3	25820
2803.1-5 Redesignated from 2803.1-4	25820
2803.6-3 Amended	25820
2803.6-4 Revised	25820
2803.6-5 (d) amended	25808
2808.1—2808.6 (Subpart 2808) Added	25808
2808.1 (b) introductory text corrected	34456
2808.4 (a)(1) introductory text and table corrected	36576
2808.5 (c) corrected	34456
2808.6 (b) corrected	36576
2881.1-1 (g) amended	25821
2881.2 (a)(2) removed; (a) (3) through (5) redesignated as (a) (2) through (4)	25821
2883.1-2 Amended	25821
2920 Authority citation vised	49115
2920.0-3 Revised	49115
2920.0-5 (m) added	49115
2920.1 Revised	49115
2920.1-1 Added	49115
2920.1-2 Added	49115
3100 Clarification of Form 3104-8	22646
3160 Authority citation revised	5390
Note 1 amended	5390
Note 1 corrected	36577
3160.0-5 Nomenclature changes; amended	5390
3161.1 Revised	5391
3161.2 Nomenclature changes	5391
3161.3 (b) revised	5391
3162.3 (b) amended	5391
3162.3-1 (d) nomenclature change	5391
3162.3-2 (a) and (b) amended	5391
3162.3-3 Nomenclature change	5391
3162.4-1 (b) amended	5391
3162.4-3 Heading amended; nomenclature changes	5391
3162.6 Revised	5391
3162.7-2 Nomenclature change; amended	5392
3162.7-3 Amended	5392
3162.7-4 (a) amended; (b) through (d) revised	5392
3163.1 Revised	5393
(a)(3) corrected	10225

43 CFR—Continued

Chapter II—Continued	52 FR Page
3163.2 Removed; new 3163.2 redesignated from 3163.4-1 and revised	5393
(a) corrected	10225
3163.3 Removed	5393
Redesignated from 3163.4-2	5394
3163.4 Added	5394
Corrected	10225
3163.4-1 Redesignated as 3163.2 and revised	5393
3163.4-2 Redesignated as 3163.3	5394
3163.5 (b) and (c) amended	5394
(a) and (c) corrected	10225
3165.3 Revised	5394
Heading, (a), and (b) corrected	10225
3165.4 Revised	5395
(d)(1) corrected	10225
3190 Added	27182
3400.0-5 (rr)(5) and (6)(i) corrected	416
3420.1-4 (e)(3) revised	46472
3420.1-6 Revised	46473
3430.3-1 (a) amended	25798
3430.3-2 (c) added	25798
3430.4-1 (c) through (e) redesignated as (d) through (f); new (c) and (g) added; new (d)(2) amended	25799
3430.4-3 Added	25799
3430.4-4 Added	25799
3430.5-1 (a)(2) amended; (c) added	25800
3451.2 (e) amended	28824
3461.1 Redesignated as 3461.5; new 3461.1 redesignated from 3461.2	46473
3461.2 Redesignated as 3461.1; new 3461.2 redesignated from 3461.3	46473
3461.2-1 Redesignated from 3461.3-1 and (b)(1) revised	46473
3461.2-2 Redesignated from 3461.3-2	46473
3461.3 Redesignated as 3461.2; new 3461.3 redesignated from 3461.4	46473
3461.3-1 Redesignated as 3461.2-1 and (b)(1) revised; new 3461.3-1 redesignated from 3461.4-1	46473
3461.3-2 Redesignated as 3461.2-2; new 3461.3-2 redesignated from 3461.4-2	46473

43 CFR—Continued

52 FR Page

Chapter II—Continued

3461.4 Redesignated as 3461.3; new 3461.4 redesignated from 3461.5....................46473
3461.4-1 Redesignated as 3461.3-1....................46473
3461.4-2 Redesignated as 3461.3-2....................46473
3461.5 Redesignated as 3461.4; new 3461.5 redesignated from 3461.1 and amended....................46473
  (a)(3), (c)(1), (g)(1), (i)(1) and (t)(2)(ii) amended; (e), (o)(1) and (t)(1)(i) revised; (h)(2)(i) removed; (h)(2) (ii) and (iii) redesignated as (h)(2) (i) and (ii)....................46473
3472.1-2 (e)(4)(iv)(A) (*3*) and (*5*) corrected....................416
3560 Lease renewals; latent ambiguity corrected....................48124

1988

43 CFR

53 FR Page

Chapter II

2804.1 (b) revised....................17702
2884.1 (b) revised....................17702
3000—3040 (Group 3000) Note amended....................17375
3000 Authority citation revised....................17351, 22835
3000.0-5 (g), (k), and (l) revised....................17351
  (f) revised....................22835
  Correctly designated....................31958
3000.4 Revised....................22835
3000.8 Added....................17351
3000.9 Added....................22835
3040 Removed....................17351
3100—3190 (Group 3100) Note amended....................17375
  Note corrected....................31959
3100 Authority citation revised....................17351, 22835
3100.0-3 (a)(2)(i) and (b)(2)(i) revised; (e) amended....................17351
  (a)(2) (iii) and (v), (b)(2)(vi), (c), and (g)(4) amended; (a)(2) (vii) through (xi) and (b)(2) (viii) through (xii) added; (g)(4) heading revised....................22835
  (a)(2)(x) and (c) corrected; (b)(2)(vi) correctly designated....................31958

43 CFR—Continued

53 FR Page

Chapter II—Continued

3100.0-5 (a) and (e) revised; (f) and (h) removed; (g), (i), (j), (k), and (l) redesignated as (f), (g), (h), (i) and (j); (d) and new (h) (1) and (2) amended; new (i) and (j) revised....................17352
  (k) added....................22836
3100.2-2 Amended....................17352
3100.3 Removed; new 3100.3 redesignated from 3100.4....................22836
3100.3-1 Removed; new 3100.3-1 redesignated from 3100.4-1....................22836
3100.3-2 Removed; new 3100.3-2 redesignated from 3100.4-2....................22836
3100.3-3 Redesignated from 3100.4-3 and amended....................22836
3100.4 Redesignated as 3100.3....................22836
3100.4-1 (b) introductory text, (3), and (4) amended....................17352
  Redesignated as 3100.3-1....................22836
3100.4-2 Redesignated as 3100.3-2....................22836
3100.4-3 Revised....................17352
  Redesignated as 3100.3-3 and amended....................22836
3101.1-1 Revised....................17352
3101.1-2 Revised....................17352
3101.1-3 Added....................17352
  Amended....................22836
3101.1-4 Added....................22836
  Corrected....................31958
3101.2-1 (b) amended....................17352
3101.2-3 Amended....................17352
3101.2-4 (b) amended....................17353
3101.2-5 Amended....................17353
3101.3-1 Amended....................17353
3101.3-2 Amended....................17353
3101.7-1 Revised....................22836
3101.7-2 Removed; new 3101.7-2 redesignated from 3101.7-4 and (b) revised....................22836
3101.7-3 Removed....................22836
  Redesignated from 3101.7-5 and revised....................22837
3101.7-4 Redesignated as 3101.7-2 and (b) revised....................22836
3101.7-5 Redesignated as 3101.7-3 and revised....................22837
3101.8 Amended....................22837
3102.1 Amended....................17353
3102.2 Revised....................17353
3102.3 Amended....................17353
3102.4 Revised....................17353
3102.5 Revised....................17353
3102.5-1—3102.5-3 Added....................17353

43 CFR—Continued

Chapter II—Continued

	53 FR Page
3102.5-1 Revised	22837
3102.5-2 Corrected	22837
3103.1-1 Revised	22837
3103.1-2 (a)(1) amended; (a)(2) revised	17353
3103.2-1 (a) amended; (b) revised	22837
(a) corrected	31958
3103.2-2 Introductory text revised	17353
Introductory text corrected; (a) through (f) revised; (g) through (k) removed	22837
3103.3-1 (c) and (d) removed; (e) redesignated as new (c)	1226
(b) amended; (c) and (d) removed; (e) redesignated as (c); new (d) added	17354
Revised	22838
3103.3-2 (a) revised	22838
3103.3-3 Removed	17354
3103.4-1 (b)(1) and (c) amended	17354
3103.4-2 Revised	17354
3104.1 (a) revised	17354
Revised	22838
3104.2 Revised	22839
3104.3 (b) amended	17354
Revised	22839
(a) corrected	31958
3104.4 Revised	22839
3104.5 Revised	22839
3104.6 Revised	17354
3104.7 (b) revised	17354
3104.8 Amended	17355
Corrected	31867
3105.2-3 Revised	17355
3105.6 Added	17355
3106.1—3106.8-3 (Subpart 3106) Revised	17355
3106.1 Revised	22839
3107.1 Amended	17357
Corrected	22839
3107.2-2 Amended	17357, 22840
3107.2-3 Heading revised	17357
Amended	22840
Corrected	31958
3107.3-2 Amended	17357
3107.4 Amended	17357
3107.6 Amended	17357
3107.7 Amended	22840
3107.8-1 (a) revised	22840
3107.8-3 (b) amended	17357
(a) amended	22840
3108.1 Amended	17357, 22840

43 CFR—Continued

Chapter II—Continued

	53 FR Page
3108.2-1 (a) revised; (b) amended	17357
3108.2-2 (a) (2) and (3) amended	17357
3108.2-4 (a) amended	17357
(e)(2) amended	22840
3108.3 (a) revised; (b) redesignated as (d); new (b) and (c) added	22840
Old (c) correctly removed	31868
3108.4 Amended	17357
3108.5 Added	17357
Heading corrected	22840
3109.1-2 Revised	17357
Corrected	22840
3109.2 (c)(1) and (d)(1)(ii) amended	17358
Heading revised; text amended	22840
3109.3 Removed; new 3109.3 redesignated from 3109.4	22840
3109.4 Redesignated as 3109.3	22840
3110 Revised	22840
Authority citation corrected	31958
3110.1 (b) corrected	31958
3110.3-1 Corrected	31958
3110.4 (a) corrected	31958
3110.5-5 Corrected	31868
3111.1—3111.3-5 (Subpart 3111) Removed	22843
3112.0-5—3112.7 (Subpart 3112) Removed	22843
3120 Revised	22843
3120.3-2 Introductory text corrected	31958
3130 Authority citation revised	17358, 22846
3130.0-5 (e) removed; (f) and (g) redesignated as (e) and (f)	17358
3130.3 Amended	17358
3130.5 Amended	17358
3131.2 (a) and (b) amended	17358
3132.3 (a) and (b) amended	17358
3133.1 (c) amended	17358
3133.2 Amended	17358
3133.2-1 Amended	17358
3134.1 (a) and (c) amended; (b), (d), and (e) revised	17358
(a) amended	22846
3134.1-1 Amended	17358
3134.1-2 Existing text designated as (a) and amended; (b) added	17358
3135.1—3135.1-6 (Subpart 3135) Heading revised	17359

43 CFR—Continued

Chapter II—Continued

	53 FR Page
3135.1 Revised	17359
3135.1-1 Heading revised; (a) through (d) amended; (e) and (f) added	17359
(d) corrected	31867
3135.1-2 (b) amended; (c) revised	17359
3135.1-3 Revised	17359
Heading corrected	31959
3135.1-4 Heading revised; (a) amended	17359
3136.1 Amended	17359
3143.1 (a) amended	22846
3150 Added	17359
3150.0-5 (b) corrected	31959
3152.7 (a)(1) correctly designated	31959
3154.3 Corrected	31867
3160 Note 1 amended; authority citation revised	17361
Authority citation revised	22846
3160 Technical correction	49664
3160.0-5 Revised	17362
(v) redesignated as (w); new (v) added	22846
3161.1 (a) amended	17362
3161.2 Amended	17362
3162.1—3162.8 (Subpart 3162) Heading revised	17363
3162.1 (a), (b), and (c) amended	17363
3162.2 (a), (b), and (c) amended	17363
3162.3 Revised	17363
(b) corrected	31959
3162.3-1 (c) amended; (d)(3) removed; (d)(4) redesignated as (d)(3); (g) added	17363
(d) and (e) revised; (f) and (g) redesignated as (h) and (i) and revised; new (f) and (g) added	22846
(e) corrected	31958
3162.3-2 (a) amended	17363, 22847
3162.3-3 Amended	17363, 22847
3162.3-4 (a) and (c) amended	17363
(c) amended	22847
3162.4-1 (a) and (b) amended	17363
3162.4-2 (a) and (b) amended	17363
3162.4-3 Introductory text amended	16413
3162.5-1 (a), (b), (c) and (e) amended	17363
(b) amended	22847
3162.5-2 (a) through (d) amended	17363

43 CFR—Continued

Chapter II—Continued

	53 FR Page
3162.5-3 Amended	17363
3162.6 (b) amended	17363
3162.7-1 (a), (d), and (e) amended	17363
3162.7-4 Redesignated as 3162.7-5; new 3162.7-4 redesignated from 30 CFR 206.104	1218
Revised	1226
Introductory text, (b), (e), and (h) amended	17364
3162.7-5 Redesignated from 3162.7-4	1218
Correctly designated	24688
3162.8 (a) through (d) amended	17364
3163.1—3163.6 (Subpart 3163) Heading revised	17364
3163.1 (a) introductory text, (1), (2), (4), (5), and (6), (c) and (d) amended	17364
(a)(5) amended	22847
3163.2 (a), (b), (g)(1), (2) (i), (ii), and (iii) and (j) amended	17364
3163.5 Heading revised; (b) and (c) amended	17364
3164.1 (b) table amended	46804
3164.1 (b) amended	17364
3164.3 (a) amended	17364
(b) amended; (c) added	22847
3165.1 (a) and (c) amended; (b) revised	17364
3165.1-1 Amended	17365
3165.2 Amended	17365
3165.3 (a) amended	17365
3165.4 (c) and (d) amended	17365
3180 Authority citation revised	17365
3183.3-1 Redesignated as 3183.4 and revised	17365
3183.4 Redesignated as 3183.5; new 3183.4 redesignated from 3183.3-1 and revised	17365
3183.5 Redesignated as 3183.6; new 3183.5 redesignated from 3183.4	17365
3183.6 Redesignated as 3183.7; new 3183.6 redesignated from 3183.5	17365
3183.7 Redesignated from 3183.6	17365
3184.1 (Subpart 3184) Removed	22847
3186.1 Amended	17365
Corrected	31867, 31959

43 CFR—Continued

Chapter II—Continued

	53 FR Page
3200—3280 (Group 3200) Note added	17375
3200 Authority citation revised	17366, 22847
3200.0-3 Amended	17366
3200.0-5 (b), (e), (f), and (g) revised; (k) (1) through (3) removed; (m) through (w) added	17366
3200.0-6—3200.0-7 Removed	17366
3200.0-6 Redesignated from 3200.0-8 and (a) amended	17366
3200.0-8 Redesignated as 3200.0-6 and (a) amended	17366
3200.1 Added	17366
(c) corrected	31959
3200.2 Added	17366
Corrected	31867
3201.1-1 Existing text designated as (b) and amended; (a) added	17367
3201.1-2 (b)(2) amended	17367
3201.1-4 Amended	17367
3202.2 Amended	17367
3202.2-2 Removed; new 3202.2-2 redesignated from 3202.2-3 and revised	17367
3202.2-3 Redesignated as 3202.2-2 and revised; new 3202.2-3 redesignated from 3202.2-5 and amended	17367
3202.2-4 Removed; new 3202.2-4 redesignated from 3202.2-6 and amended	17367
3202.2-5 Redesignated as 3202.2-3 and amended	17367
3202.2-6 Redesignated as 3202.2-4 and amended	17367
3203.1-1 Revised	17367
3203.1-3 (a) designation removed	17367
3203.1-4 (d) amended	17367
3203.2 (b) and (d) amended	17367
3203.3 Amended	17368
3203.5 Amended	17368
3203.6 Introductory text, (a) and (b) amended	17368
3203.8 (a) and (b) amended	17368
3205.1—3205.4-2 (Subpart 3205) Heading revised	17368
3205.1-2 (a)(1) amended	17368
3205.2 Revised	17368
3205.3-1 Amended	17368
3205.3-2 (a) and (c) amended; (d) revised	17368

43 CFR—Continued

Chapter II—Continued

	53 FR Page
3205.3-7 (b) introductory text revised	17368
3205.3-8 Revised	17368
3205.3-9 Amended	17369
3205.4-1 Amended	17369
3205.4-2 Amended	17369
3206.1 Revised	17369
3206.1-1 Revised	17369, 22847
(c)(5)(iii) corrected	31958
3206.1-2 Revised	17369
Corrected	31867
3206.2 Revised	17369
Corrected	31959
3206.3 Removed; new 3206.3 redesignated from 3206.3-3 and revised	17369
3206.3-1—3206.3-2 Removed	17369
3206.3-3 Redesignated as 3206.3 and revised	17369
3206.4 Removed; new 3206.4 redesignated from 3206.5 and revised	22847
3206.4-1—3206.4-3 Removed	22847
3206.5 Revised	17369
Redesignated as 3206.4 and revised; new 3206.5 redesignated from 3206.6 and revised	22847
3206.6 Revised	17369
Redesignated as 3206.5 and revised	22847
Added	22848
3206.9 Added	17369
3207.2-3 (c) revised	17369
3207.3-2 (c) revised	17369
3209.0-1 (a) amended	17369
(a) corrected	31867
3209.0-5 (c) removed; (d) redesignated as (c)	17370
3209.4-1 (b) revised	17370
3210 Authority citation revised	17370
Note removed	17375
3210.2-1 Revised	17370
3220 Authority citation revised	17370
3220.2 Revised	17370
3220.2-1 Added	17370
3220.2-2 Added	17370
Corrected	31959
3220.3 Revised	17370
Corrected	31959
3220.4 (a) amended	17370

43 CFR—Continued

53 FR Page

Chapter II—Continued

3220.5 (c) through (e) redesignated as (d) through (f); (b), new (e) and (f) amended; new (d) revised; new (c) added........17370
3240 Authority citation revised........17370
3241.1—3241.9 (Subpart 3241) Heading revised........17370
3241.1 Revised........17371
3241.1-1 Heading revised; (a) designation removed and text amended; (b) removed; (1), (2), and (3) redesignated as (a), (b), and (c)........17371
3241.1-2 Added........17371
3241.2 Revised........17371
3241.2-1 Revised........17371
3241.2-2 Removed; new 3241.2-2 redesignated from 3241.2-3 and revised........17371
3241.2-3 Redesignated as 3241.2-2 and revised; new 3241.2-3 redesignated from 3241.2-4 and revised........17371
3241.2-4 Redesignated as 3241.2-3 and revised; and 3241.2-4 redesignated from 3241.2-5 and revised........17371
3241.2-5 Redesignated as 3241.2-4 and revised........17371
3241.3 Revised........17371
3241.4 Revised........17371
3241.5 Revised........17371
3241.7-1 (b) amended; (d) redesignated as (c) and amended........17371
3241.8 Revised........17371
3241.9 Revised........17371
3242.1 Introductory text and (c) amended........17371
3242.2-2 Amended........17372
3243.1 Amended........17372
3243.2 Amended........17372
3243.3-1 (a), (b), (c) amended........17372
3243.3-2 Amended........17372
3243.4-1 (a) revised; (b) and (c) amended........17372
3243.4-2 (a) and (b) amended........17372
3244.1 (a) introductory text revised........17372
3244.2-1 Amended........17372
3244.2-2 (a) and (b)(1) amended........17372
3244.5 Amended........17372
3250 Authority citation revised........17372
  Note removed........17375

43 CFR—Continued

53 FR Page

Chapter II—Continued

3250.0-1—3250.9 (Subpart 3250) Note removed........17375
3250.0-3 Amended........17372
3250.1-2 Revised........17372
3250.4-1 Amended........17373
3250.4-2 Amended........17373
3250.6-1 (b) amended........17373
3250.6-2 (a) amended........17373
3250.6-3 Amended........17373
3250.8 (a) and (b) amended........17373
3250.9 (a) and (d) amended........17373
3260 Note 1 amended; Note 2 revised........17375
3260.0-5 (a) and (b) revised; (c) through (o) redesignated as (d) through (p); new (c) added; new (i) and (p) amended; new (j) and (o) revised........17373
3261.2 Amended........17373
3261.8 Removed........17373
3262.1—3262.9 (Subpart 3262) Heading revised........17373
3262.1 (a), (b), and (c) amended........17373
3262.2 Revised........17373
3262.2-1 Heading revised; text amended........17374
3262.3 (a) and (b) amended........17374
3262.4 Amended........17374
3262.4-1 Introductory text and (i) amended........17374
3262.4-2 Amended........17374
3262.5 Amended........17374
3262.5-1 (a), (b) and (c) amended........17374
3262.5-2 (a) and (b) amended........17374
3262.5-3 Amended........17374
3262.5-4 Amended........17374
3262.5-5 Amended........17374
3262.6 Amended........17374
3262.6-1 Amended........17374
3262.6-2 Amended........17374
3262.6-3 Amended........17374
3262.7 Amended........17374
3262.7-1 Amended........17374
3263.1 Amended........17374
3263.2 Amended........17374
3263.3 Revised........17374
3264.2-2 (d) amended........17374
3264.2-3 Amended........17375
3264.3 Amended........17375
3264.4 Removed; new 3264.4 redesignated from 3264.5 and amended........17375

43 CFR—Continued

53 FR Page

Chapter II—Continued

3264.5 Redesignated as 3264.4 and amended....17375
3265.1 (a) amended....17375
3280 Authority citation revised....22848
3284.1 (Subpart 3284) Removed....22848
3450 Technical correction....39015
3451.1 (c)(2) and (e) revised....37300
3451.2 (a), (b), (c), and (e) revised....37300
3483.3 (b) (1) and (3) amended....49986
3500—3590 (Group 3500) Heading revised....39461
3590 Revised....39461
3597.2 Redesignated as 30 CFR 206.301....39461
3830 Authority citation added....48881
3833.0-3 (d) amended....48881
3833.0-5 (j) revised; (p), (q), (r) and (s) added....48881
3833.1-1 Heading revised; existing text designated as (a); (b) added....48881
3833.1-3 Revised....48881
3833.1-4 Added....48881
Technical correction....49664
3833.2 Revised....48881
3833.2-1 Revised....48881
3833.2-2 Redesignated as 3833.2-4; new 3833.2-2 added....48881
3833.2-3 Redesignated as 3833.2-5; new 3833.2-3 added....48881
3833.2-4 Redesignated as 3833.2-6; new 3833.2-4 redesignated from 3833.2-2....48881
3833.2-5 Redesignated from 3833.2-3....48881
3833.2-6 Redesignated from 3833.2-4....48881
3833.4 (b) amended....48882
3833.5 (d) amended; (h) added....48882
3850 Authority citation added....48882
3852.2 (a) amended....48882
3860 Authority citation added....48882
3862.1-2 Revised....48882

1989

43 CFR

54 FR Page

Chapter II

2800 Authority citation revised....25854
2800.0-3 Revised....25854
2800.0-5 (u) through (z) added....25854
2801.3 Revised....25854
2810 Authority citation added....25855
2812.0-3 Revised....25855
2812.1-3 Revised....25855
2880 Authority citation revised....25855
2881.3 Revised....25855
3160 Technical correction....39527, 39529
3164.1 (b) table amended....8060, 8092, 8106
(b) table corrected....39527, 39529
3200—3260 (Group 3200) Note revised; interim....13885
3200 Authority citation revised....13885
3200.0-5 (x) and (y) added; interim....13885
3201.1-1 (c) added; interim....13885
3201.1-6 Revised; interim....13885
3203.1 Revised; interim....13886
3203.1-3 Existing text designated as (a) and revised; (b) added; interim....13886
3203.1-4 (e) removed; (b) and (c) revised; interim....13886
3203.5 Amended; interim....13887
3244.4 Existing text designated as (a); (b) added; interim....13887
3283.2-2 Added; interim....13887
3480 Training seminars....12611
3485.2 (d) through (i) and (k) removed; (j) redesignated as (d)....1532

1990

(Regulations published from January 1, 1990 through October 1, 1990)

43 CFR

55 FR Page

Chapter II

3106.5 Amended....12350
Corrected....18604
3140.0-5 (d) removed; (e), (f), and (g) redesignated as (d), (e), and (f)....12351

43 CFR—Continued

55 FR Page

Chapter II—Continued

3140.1-3 (a) and (b) amended......12351
3140.1-4 (d)(1) amended..............12351
3140.2-2 Revised............................12351
3140.2-3 (a), (b), (g)(1), (2) and (3) amended..............................12351
3140.3-2 Amended..........................12351
3140.4-1 (a) amended....................12351
3140.7 Amended..............................12351
3141.0-8 (a) revised; (b) amended...12351
3141.2-1 Amended..........................12351
3141.2-2 (b)(4) and (e)(3) amended.......................................12351
3141.4-2 (b) amended....................12351
3141.5-3 (a) revised; (b) and (d) amended.......................................12351
3141.6-2 Amended..........................12351
3141.6-7 Revised.............................12351
3160 Authority citation revised...12351
3200—3260 (Group 3200) Regulation at 54 FR 13885 confirmed..26443
3200.0-5 Regulation at 54 FR 13885 confirmed..........................26443
3201.1-1 Regulation at 54 FR 13885 confirmed..........................26443
3201.1-6 Regulation at 54 FR 13885 confirmed..........................26443

43 CFR—Continued

55 FR Page

Chapter II—Continued

3203.1 Regulation at 54 FR 13885 confirmed..........................26443
3203.1-3 Regulation at 54 FR 13886 confirmed..........................26443
3203.1-4 Regulation at 54 FR 13886 confirmed..........................26443
3203.5 Regulation at 54 FR 13887 confirmed..........................26443
3244.4 Regulation at 54 FR 13887 confirmed..........................26443
3283.2-2 Regulation at 54 FR 13887 confirmed..........................26443
3473.3-2 (a)(1) removed; (a)(2) through (4) and (b) through (d) redesignated as (a)(1) through (3) and (c) through (e); new (a)(2) revised; new (b) added..2664
3833.0-5 (k), (l), and (m) amended...17754
3833.1-2 (b) introductory text amended.....................................17754
3833.2-6 Amended..........................17754
3833.3 (a) introductory text amended.....................................17754
3833.4 (a), (b), and (d) amended...17754
3833.5 (c) amended........................17754

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